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Women's Inheritance Rights to Land and Property in South Asia: *A Study of Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka*

A Report by the Rural Development Institute (RDI)
for the World Justice Project

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Table of Contents

Executive Summary	3
Introduction.....	5
1. Inheritance Laws.....	7
2. Laws and customs which impact women’s inheritance	12
3. Approaches to designing interventions	18
4. Conclusions	21
5. Case Studies	22
– Afghanistan	22
– Bangladesh	29
– India.....	39
– Nepal	47
– Pakistan	56
– Sri Lanka	64

This study was undertaken by the Rural Development Institute for the World Justice Project.

The study reviews the formal and customary laws and practices governing the rights of women to inherit land in six South Asian countries (Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka). The study includes an analysis of existing laws and customs and their impact on inheritance and land rights in all six countries. It also provides recommendations for how to design interventions that can attempt to improve women’s inheritance rights.

Women's Inheritance Rights to Land and Property in South Asia: *A Study of Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka*

A report by Elisa Scalise
Rural Development Institute (RDI)

Executive Summary

Women in developing countries rarely hold secure rights to land, which can provide physical safety and psychological security. Land can be a source of food and a base for income-generating activities. Land rights elevate the status of the rights holder in the eyes of family members and the community. Land rights create a sense of self-worth and give people options. Ensuring that women have equitable rights to land acknowledges their worth, helps break down perceptions of inequality within households and communities, and reduces their dependence on men for their survival.

The South Asian countries in this study have different histories, politics, terrain, and culture, however, in each, land is a highly valued asset. Women generally acquire land rights through inheritance, if at all. Inheritance laws fall within the class of personal laws, which can vary within the country, depending on religion or ethnic group.

But an assessment of personal laws tells only part of the story. Women's inheritance rights are also impacted by other factors; mostly these are other laws and customs which govern family and social relations. Based on the case studies provided in the annex of this study, the following factors may have an impact on women's inheritance rights.

- **Formal laws discriminate by deferring to customary or religious law**
- **Female inheritance may be restricted to certain categories of land**
- **Polygamy/marriage practices may impact inheritance**

- **Bride price and/or dowry are often viewed as women's inheritance and are often not given directly to women**
- **Other social factors**

Women's inheritance rights are beset with highly contextual legal and cultural obstacles. The following recommended approaches are sound first steps towards identifying possible means to address the *cultural change* that will be required to ensure equity in inheritance rights for women and men. Land rights for women must be both legally and socially recognized to be effective.

- **Speak to women about property rights for women.** Since customary rules often govern women's lives, attempting to change custom can be very threatening to women and men alike. Any planned intervention must include significant efforts to solicit information from women.
- **Work with men to champion the property rights of women.** In patriarchal cultures, men are the powerbrokers; projects intended to promote gender equity must explicitly target men as well as women.
- **Understand the specifics.** Study the role of customary, religious and formal laws for women noting that the relevant roles may be different across regions, tribes, clans and class.
- **Legal awareness, legal literacy, and legal aid.** Lack of awareness and enforcement has a critical impact on women's inheritance.
- **Initiate debate with policy makers, NGOs, networks, and advocates towards creating social legitimacy for women's land rights and control over resources.** Women and men both can use their voting power to affect the policy position of candidates running for election.
- **Legal Change.** While it is true that legal change alone is insufficient to ensure women's inheritance rights in the face of customary law, a strong legal foundation can be an important and necessary first step.
- **Land leasing, purchase, or allocation programs for women.** The underlying expectation is that a woman will gain more power within the household and thus be less prone to abandonment or domestic abuse if she is the owner of the land that the family relies on for its survival.

Introduction

This study is undertaken by the Rural Development Institute for the World Justice Project. The objective of this desk-study is to review the formal and customary laws and practices governing the rights of women to inherit land and property in six South Asian countries (Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka). The study includes an analysis of existing laws and customs and their impact on inheritance and property rights in all six countries.

Importance of land rights¹

Land is a critical asset in most developing countries, especially for the poor. Most of the rural poor rely on subsistence agriculture for their survival. Furthermore, customary and formal rights to land act both as a form of *economic access* to key markets and as a form of *social access* to nonmarket institutions, such as the household and community-level governance structures. Land ownership confers economic benefits as an input into agricultural production, as a source of income from rental or sale, and as collateral for credit that can be used for either consumption or investment purposes.



Women may not fully share these benefits if they do not share formal or customary property rights. In addition to the short- and medium-term economic gains generated by greater access to land, capital, and product markets, women with stronger property rights to land are also less likely to become economically vulnerable in their old age, or in the event of the death of or divorce or abandonment from a spouse. Land is a particularly critical resource for a woman in the event that she becomes a *de facto* household head as a result of male migration, abandonment, divorce, or death. In both urban and rural settings, independent land property rights under these circumstances can

mean the difference between dependence on natal family support and the ability to form a viable, self-reliant, female-headed household.

¹ See Renee Giovarelli, Susana Lastarria-Cornhiel, Elizabeth Katz, and Sue Nichols, *Gender Issues and Best Practices for Land Administration Projects: A Synthesis Report*, at 3-10 (2005) World Bank, available at http://siteresources.worldbank.org/INTARD/Resources/Gender_land_fulltxt.pdf

Land in South Asia.

In South Asia, land is the most valued form of property, conveying economic, political and symbolic significance. While there are significant differences in history, politics, terrain and culture in the six countries addressed in this study, they share a number of common features. Most countries in this survey suffer from population pressure and landlessness, where a large portion of the population owns little to no land. In these cases, the rural landless typically work as agricultural laborers or as tenants on the land of others to survive. In addition, each of the countries studied have high levels of poverty, with the majority of the poor being rural, and with close poverty-landlessness links. Many of the countries studied have experienced some form of conflict in the recent past, and while they each claim nationhood, each country is composed of significant and determinative regional, ethnic, tribal, religious, class, and caste differences. While the legal framework for each country reflects its own particular political, social, and economic history, all countries are characterized by some degree of legal pluralism, especially when it comes to women's land rights.

*Religion and custom heavily influence women's property rights in South Asia*

In South Asia, inheritance is often the vehicle that grants women property rights.² Women's inheritance rights are mostly governed by formal and customary laws, and the primary formal laws are personal laws which tend to be heavily influenced by custom and religion. Personal laws are those laws that deal with matters pertaining to a person and his or

² Giovarelli, *supra* note 1 at 7,

her family. While women often gain property rights through personal laws that govern inheritance, the right to inherit is impacted by other personal laws and practices such as polygamy, marital property rules, bride price or dowry and *inter vivos* gift or partition. To a lesser extent women's inheritance rights can be impacted by laws that govern transfer of property as well, such as government allocation, purchase, or lease.

The personal laws which govern inheritance for women may be statutory, religious, or customary. However, it is often difficult to precisely identify a given personal law as either one of those types; rather, personal laws evolve from the interplay of statute, religion, and custom, and, how those bodies of laws are interpreted by judicial or other official decisions.

For example, in Afghanistan Islamic law has been codified making it the statutory law for all matters that it covers, yet in practice tribal law determines inheritance. Likewise, Islamic law has been codified in Sri Lanka, as has the customs of two historically important ethnic groups, and all three form part of the body of statutory law for the country. For the purpose of this study, unless otherwise stated, the source of the law will determine how it is referenced. That is, if the source of

In South Asia, inheritance is often the vehicle that grants women property

the law is custom, then it will be referred to as customary law, if the source is religion, then it will be referred to as religious law, and if the source is a legislative body that has not made reference to religion or custom, then it will be referred to as statutory law. Also, formal law will refer to those laws which have been codified and adopted by formal political bodies as a group, no matter their provenance.

Defining the types of personal law is perhaps less important than recognizing that most South Asian countries have pluralistic legal systems. Legal pluralism generally means that there is more than one body of law which operates in a given area or for a given people. The bodies of law may be formal, or they may be the unwritten rules and practices that become an intrinsic part of the accepted conduct in a community.

The remainder of this document discusses the personal laws that govern women's inheritance rights in more detail. Section Two provides a table of the formal personal laws governing the inheritance rights of women, as daughters or wives for each country. Section Three discusses the other formal laws and customary laws impacting women's inheritance rights. Section Four provides examples of the types of interventions which might be considered to address women's property rights in South Asia. Following the conclusion, the annexes contain background studies on each of the countries studied.

1. Inheritance laws

If a woman acquires land rights, it is most often via inheritance. Like many other laws governing property rights for women, inheritance laws fall within the class of personal laws, and it is in the realm of personal laws that the legally pluralistic nature of most South Asian

countries is evident. The following chart briefly describes the formal inheritance laws in the six countries studied.

Country	Inheritance Laws	Source	Jurisdiction	Rights of wives and daughters on intestate succession
Afghanistan	Afghan Civil Code sections 289-342 and 1993-2267	Islamic Law (Hanafi)	All Afghans	Women sharers (as wives, sisters, grandmothers or daughters) inherit but not equally to their male counterpart
Bangladesh	<ul style="list-style-type: none"> • Muslim Personal Law and Administration of Justice (Shariat) application Act of 1937 • Hindu Inheritance (removal of disabilities) Act of 1928; Hindu law of inheritance (amendment) Act of 1929 • Succession Act of 1925 	<p>Islamic law</p> <p>Hindu dayabhaga system</p> <p>Common law</p>	<p>Muslims</p> <p>Hindus</p> <p>Christians</p>	<p>Women sharers (as wives, sisters, grandmothers or daughters) inherit but not equally to their male counterpart</p> <p>Widow receives life estate; unmarried daughters and daughters with sons inherit; married daughters with daughters and childless daughters do not.</p> <p>Widow receives one third; lineal descendants (sons and daughters) receive two thirds divided among them.</p>
India	<ul style="list-style-type: none"> • Hindu Succession Act of 1956 • Muslim 	<p>Hindu religion</p> <p>Islamic</p>	<p>All Hindus (unless choose to exclude)</p> <p>Muslim</p>	<p>Estate divided into shares: widows receive one share, sons, daughters and mother of deceased receive one share each, heir of predeceased sons and daughters receive one share between them.</p> <p>Generally women (as</p>

Country	Inheritance Laws	Source	Jurisdiction	Rights of wives and daughters on intestate succession
	<p>Personal Law (Shariat) Application Act of 1937</p> <ul style="list-style-type: none"> • Indian Succession Act of 1925 (portions) • Indian Succession Act of 1925 (portions) 	<p>Law</p> <p>English common law</p> <p>Parsi custom</p>	<p>community</p> <p>Christian community</p> <p>Parsi community</p>	<p>wives, daughters, sisters, or grandmothers) inherit half of the share of their male counterpart</p> <p>Widow receives one third; lineal descendants (sons and daughters) receive two thirds divided among them.</p> <p>Widows and children (sons and daughters) inherit equal shares among them.</p>
Nepal	Country Code of Nepal (Muluki Ain) (1963) Eleventh Amendment (2002)	Hinduism	All Nepalese	Unmarried daughters and sons inherit ancestral property equally. If daughter inherits and then marries she must return her share of ancestral property to the heirs (brothers). Widows inherit from deceased husbands.
Pakistan	<ul style="list-style-type: none"> • Muslim Personal Law (Shariat) Application Act of 1962 (MPLA) • Customary law (via the MPLA) 	<p>Islamic law</p> <p>Custom</p>	<p>All Muslims (Presumed to be Hanafi unless proved otherwise.)</p> <p>For inheritance of agricultural land.</p>	<p>Women (as wives or daughters) sharers receive half as much as their male counterparts.</p> <p>Inheritance decided by the personal law of the citizen.</p>

Country	Inheritance Laws	Source	Jurisdiction	Rights of wives and daughters on intestate succession
Sri Lanka	<ul style="list-style-type: none"> • Muslim Intestate Succession Ordinance No. 10 of 1931 	Islamic law	Muslims in Sri Lanka. No opt out option.	Women (as wives, daughters, sisters, and grandmothers) inherit but not equally to their male counterpart
	<ul style="list-style-type: none"> • Matrimonial rights and inheritance (Jaffna), <i>aka</i> Thesawalamai 	Tamil custom from the Jaffna region	Tamil inhabitants of the Jaffna peninsula and Jaffna Tamils no longer residing in the Jaffna peninsula, and to their property no matter where it is located. No opt-out option.	Widow keeps separate property; widow receives half of property acquired during marriage and half shared equally amongst children (sons and daughters); widow has no right to ancestral property and children (sons and daughters) inherit equally.
	<ul style="list-style-type: none"> • Kandyan Law (1939) 	Law and custom of Kandyan monarchy (ended in 1815)	All Sinhalese whose can trace their lineage back to the north-central province of Kandy during the period of the Kandyan monarchy. Does not apply to Sinhalese without this heritage now living in the	Widows receive life estate of non-ancestral property (maintenance from ancestral property if non-ancestral is insufficient), then devolves to descendants. For descendents inheritance of ancestral land depends on marriage type (<i>binna</i> or <i>dinna</i>) and origin of ancestral land (paternal or maternal). Paternal ancestral land and <i>binna</i> (groom moves to bride's home), then

Country	Inheritance Laws	Source	Jurisdiction	Rights of wives and daughters on intestate succession
	<ul style="list-style-type: none"> <li data-bbox="435 961 634 1100">• Matrimonial Rights and Inheritance Ordinance 	Roman-Dutch law as adopted and interpreted by judicial decision	<p data-bbox="846 352 976 422">Kandyan provinces.</p> <p data-bbox="846 961 1024 1457">Sinhalese who are not Kandyan or who opt out of the Kandyan Act; and non-Muslims others when statutes and codified customary laws do not apply</p>	<p data-bbox="1060 352 1385 596">daughter inherits equally with brothers and unmarried sisters. Paternal ancestral land and <i>diga</i> (bride moves to groom's home), then daughter does not inherit.</p> <p data-bbox="1060 638 1377 919">All children inherit maternal ancestral land equally provided that mother had not married in <i>binna</i> on her fathers property (where paternal ancestral land inheritance rules apply).</p> <p data-bbox="1060 961 1385 1100">Widow inherits one half share; one half shared among descendants (sons and daughters)</p>

2. Laws and customs which impact women's inheritance

Reviewing the formal personal laws only tells part of the story of women's inheritance rights in South Asia, and most of the world. There are many other factors that impact a woman's right to inherit. On the one hand, there may be issues with the formal laws themselves. On the other hand, despite what might otherwise be classified as legal pluralism, customary practices are often overwhelmingly more important to women's land rights than formal laws. In addition, whatever rights women may have to inherit are significantly impacted by other laws and customs that govern family and social relationships. Following is a description of the key issues influencing women's and girl's inheritance in the six countries studied, with examples from those countries.

a. Formal laws discriminate based on sex by deferring to customary or religious law

Women's property rights are often at the intersection of formal, customary and/or religious laws because they are most often granted via a personal relationship.

Formal laws may be *prima facie* discriminatory. For example in 2008 Nepal had 137 provisions, two rules and 121 schedules in 85 laws which were discriminatory in favor of men.³ The rules on inheritance are an example of this type of discrimination: under the Eleventh Amendment of the Muluki Ain (Nepalese Civil Code), daughters and sons inherit equally, yet after marriage, daughters are expected to return their share of family property to the heir, who can only be a male.

Likewise, formal laws of inheritance may recognize or codify customary or religious law that is discriminatory. Until very recently in India, if a Hindu father died intestate, his ancestral property devolved equally to members of the coparceny, a traditional unit of property ownership under Hindu *Mitakshara* law, which conferred rights of co-ownership to male family members upon their birth. This provision essentially prevented Hindu females from succeeding to their father's ancestral estate.



³ See UNICEF, Situation of Children and Women in Nepal (2006) at 66 available at http://www.unicef.org/sitan/files/situation_of_children_and_women_in_nepal_2006.pdf, last visited December 1, 2009.

Formal law may defer to customary or religious law that is discriminatory in practice. In Afghanistan, the civil code states that statutory law prevails, but where statutory law is silent, religious law applies, and where religious law is silent, customary law applies. Islamic law is codified in Afghanistan, so it is unclear which religious law applies if this formal religious law is silent. In practice, however, tribal or customary law, which is not codified, is applied first and is not only influential at the local level, but also in formal courts, where judges attempt to apply tribal law to appease local authorities and maintain peace.

In some cases, more than one law may apply to the same set of facts leaving a decision maker with a choice of which law to apply to an inheritance issue. This is the case in Sri

The fact that multiple laws intersect on the question of women's property rights can be problematic.

Lanka, where inheritance questions may be answered by the body of case-law, Roman-Dutch law, Shari'a law, or, depending on the ethnic group, one of two recognized customary legal

systems. Likewise, family law in Bangladesh covering marriage, division of property, and inheritance is not uniform but is determined by personal laws applicable to the religion of the deceased, which may be Christian, Hindu, Buddhist, Muslim or tribal.

In other cases, one law may trump all others. For instance, in Afghanistan, the civil code, which is mostly a codification of Hanafi school Islamic law, governs property rights generally, but when it comes to women's property rights, the statute recognizes customary law.

The fact that multiple laws intersect on the question of women's property rights can be problematic. If formal laws grant rights to women that they may not have in custom, and if those same formal laws recognize customary laws as valid, then potentially progressive provisions for women may not be implemented in practice. Also, since women tend to occupy the less powerful positions in society, if a decision-maker has a choice between which laws he can follow, it is likely that he would choose that law which is most favorable to the property rights of males rather than females.

Custom Rules. Women's Land Rights in FATA region in Pakistan

An extreme example of the magnitude of the influence of custom over women's property rights as compared to formal or even religious law comes from the Federally Administered Tribal Areas (FATA) of Pakistan.

In the FATA, tribal Pushtun women suffer from the highest levels of poverty, illiteracy and poor health not only in Pakistan but in the whole of South Asia. The FATA region is the poorest in Pakistan. Literacy rates among women are as low as 1%; one of the lowest literacy rates in the world. The overall literacy rate for tribal people in FATA is 6%. The lives of women are characterized by seclusion, limited or total absence of any asset base, and gender-based violence.

Rigid tribal norms severely proscribe the roles of women and prevent them from having secure rights to property. Women are restricted in their mobility; have limited or no access to assets and resources; no influence in decision making, even regarding their own marriage; and are victims of gender-based violence. Women contribute a significant portion of the agricultural labor force through their involvement in a broad range of agricultural activities, but their contribution is not officially recognized.

Cultural practices treat women as property, though this is not expressed as such. Bride-price is common, and the perception is that a male "purchases" his wife from her family. Women are seldom consulted on decisions regarding their marriage and are often married only for the sake of *wulwar* (money or property paid by the groom to the head of the bride's households). Women are also given as compensation to settle disputes between men.

Though most tribal peoples in FATA are Muslim, the understanding and application of Islam is often overlaid by tribal norms and culture. Thus, women in FATA are systematically denied the inheritance rights due under Islamic law. While Islamic laws apply to women in other areas of Pakistan, a defining feature of FATA is the fact that the national or state laws of Pakistan do not apply to the FATA; the tribes regulate their own affairs in accordance with customary rules and unwritten codes, which do not permit women secure property rights.

Source: Giovarelli, R., and Aggarwal, S., "Women and Land in Pakistan and FATA: A Concept Note," Associates in Rural Development, USAID, 2007.

b. Inheritance may be restricted to certain categories of land

Women's right to inherit may be influenced by the origin of the property in question. For instance, tribal or family land may be treated differently than purchased land. In Nepal, the rights of the kin group or family take precedence over the rights of women; by law male and female descendants have an equal right to inherit ancestral land, provided that the female is not married. If she is married she is not entitled to inherit ancestral land, and if she marries subsequent to the inheritance she must return the land to the male heir. These same restrictions do not apply to land which was jointly purchased by the married couple.

Likewise, under Kandyan law, which applies to certain people in Sri Lanka, women's inheritance rights differ depending on whether the property in question is acquired during the marriage or if it was inherited ancestral land; and within the category of ancestral land, paternal and maternal land is treated differently.

c. Polygamy/marriage practices may impact inheritance

The practice of and justification for polygamy can impact women's inheritance rights. Polygamy is the practice of a person having more than one spouse, and can be either polygyny or polyandry. Polygyny is the practice of a man having more than one wife, and is permitted by all Muslim societies in this study, whether the Shari'a has been codified or not. Polygyny specifically impacts the property rights of women, which are already unequal from those of male heirs under Shari'a law: with each additional wife and child the possible share that each potential heir can take from the deceased's estate is reduced.

In some areas of Nepal where polyandry (more than one man marries the same woman) is practiced, it is justified on the grounds of not dividing family land between sons. The practice is fraternal polyandry, where brothers marry the same woman. Family land in this case is not divided among sons, rather they remain in a communal type living arrangement, and the woman moves to the brothers' land. This practice has significant economic advantages for the family by retaining male labor for the family land. The practice is often justified as a means to prevent fragmentation of family land by attaching all males to the ancestral land and restricting the addition of non-family members (wives). However, since a woman's right to inherit ancestral land in Nepal is already circumscribed, the practice also becomes a further impediment to her having exclusive rights over any property, and her options outside of the home are severely constrained.

The practice of levirate can also impact a woman's property rights. Levirate, sometimes known as bride inheritance, is the custom where the brother of the deceased marries his brother's widow. Like polyandry, levirate is justified as a means to prevent family land from fragmenting, and ensures that the family retains control over family land. It also means that the widow forgoes whatever rights she might have to her deceased spouse's property. Levirate is practiced in parts of Pakistan to prevent land rights going to an outsider.



d. Bride price and/or dowry often seen as equivalent for inheritance

The payment of dowry or bride price is often considered the daughter's share of the family assets and is the accepted justification for why daughters should not inherit equally with sons. The practice has very strong roots. In many countries, the common perception is that

payment of dowry or bride price ensures the security of the daughter and that without such payment a daughter may not get married and will remain a burden on her family. This is the case in India, where families may be happy to pay dowry in hopes that their daughters will be well cared for. Payment of a large dowry is also intended to ensure that the new husband is from a well-established family, is educated, does not have bad habits (e.g., drinking, gambling), and has a good character.

In India, although prohibited by law, the custom of dowry is common. For Hindus, typically the daughter's family gives dowry to her new husband and his family. If the daughter comes from a family with land, the payment of dowry and the cost of the wedding incurred by her

In India, although prohibited by law, the custom of dowry is common.

family can impact a daughter's entitlement to a share of her family's land, in practice. Any formal right the daughter may have to inherit a portion of the family land is trumped by the cultural understanding that the

dowry and wedding costs represent the daughter's share of the family assets. Yet, during the term of the marriage, the daughter (now wife) has no right to the dowry paid by her family. Thus, while dowry is understood as the daughter's share of the family inheritance, in practice it does not benefit her or provide her economic security.

Likewise, women in Afghanistan do not benefit from the dowry, although the practice was initially justified as providing for her security in the event of marital difficulties. Under the Afghan civil code and Islamic law, a wife is entitled to inherit and to receive *mahr*, or dowry, on marriage. *Mahr* is exclusively the wife's property and is intended to give her financial security in the event of divorce. However, by custom a woman does not inherit, and *walwar* is paid in place of *mahr*. *Walwar* is a sum of money or property paid by the groom to the head of the bride's household. The value for *walwar* can be quite high and it is prohibited by formal law. This leaves the woman in the marriage without the right to inherit from her family or the financial security envisioned in Shari'a and the Afghan civil code. Moreover, the value of a daughter to the family materializes at her marriage, after that she is of little value to them. This gives her family an incentive to marry her early and makes it less likely she can successfully return to her family if her marriage fails.

On the other hand, in Pakistan, when dowry is paid, the wife often does obtain access to the property although the value of dowry is rarely equivalent to what she would have received as inheritance of the family estate. Women are paid a dowry in small gifts of moveable property, often jewelry or household items, rather than immovable property. In Pakistan as in other South Asian countries, the practice of dowry was originally intended to compensate a woman for family property that she does not inherit. Yet the value, power and respect that land ownership brings is not comparable to the gifts of movable property typically given as dowry.

Moreover, even if her family provides dowry, the daughter often does not have exclusive ownership or control over it. In Nepal, *dayo* or dowry is property – usually but not exclusively movable – that is given to the woman at the time of marriage. Things that are

part of the *dayo* are not considered ancestral property for the purpose of inheritance; however, neither are they considered the woman's separate property. Rather, it is considered joint property of the husband and wife and is ordinarily inherited by the wives' sons.

e. Other social factors that impact inheritance rights

There are a number of other factors, mostly related to women's social position, that make it less likely that a woman will gain land and property rights via inheritance, or will seek to enforce her rights even when given the chance.

Most women, in the six countries studied here, have less social mobility than men and are thus less capable, willing, or able to enforce the land rights they do have. This is partially explained by the fact that women have less access to information and thus may not be aware of their property rights. Also, in South Asia, most women's interactions are limited to the homestead, and sometimes the village. Any property-related claims a woman may have are more likely to be handled within the family rather than by outsiders. Few women would appear in a formal court against their family. This is especially the case in places where *purdah* is strictly adhered to. *Purdah*, literally meaning "curtain," is a cultural practice that restricts women's movement outside the home, and obliges women to be veiled in public.⁴ For instance, in Pakistan, most women practice *purdah*, which prevents them from learning new agricultural skills, or learning how to negotiate in the market. Many men in Pakistan believe that a woman should not own or manage family land because of her lack of social mobility and skills.

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Beyond this, women often face social pressures not to claim her property rights, and making such a claim may come at a significant personal cost for her. For example, if she speaks up in defense of her rights, a woman may be ostracized by her kin group, on whom she relies to ensure her own survival and her place in the community. Or, even if she inherits property, a woman may gift the property to her male kin because good relations with male kin are regarded as an important safety net in the case of future financial difficulties. In Afghanistan, it is culturally inappropriate for women to inherit any property and women may refuse an inheritance and give it instead to her brothers out of "respect" and love for them even when such women have a formal legal right to inherit the property. Similarly, in Bangladesh it is customary for women not to claim their share of family property unless it is given willingly and with the support of the entire family. It is customary for a woman to surrender her legal right to family property in exchange for the right to visit her parental home and the right to seek support from her brothers in the case of marital conflict.

⁴ See Organization for Economic Co-operation and Development, *Gender Equality and Institutions in Pakistan*, Social Institutions and Gender Index Series, available at <http://genderindex.org/country/pakistan>

Women may resist enforcing legal inheritance rights for other reasons. In Pakistan, women often believe themselves not to be part of either their birth family or their spouse's family, and thus do not believe themselves entitled to property rights from either. In India, women may not believe that daughters should have the right to inherit land because they did not inherit from their parents, or because a daughter will leave the family village and cannot take the land with them.

In many cases in South Asia, families do not have land for a woman to inherit. In situations of pre-existing landlessness, women's land rights may take second place to general land rights for tenant farmer, sharecropper, or laborer households. In these cases, the issue of land rights for women is colored by the socio-economic status of her family, whereby women from land owning classes are interested in gaining inheritance rights and women from landless classes are more interested in just gaining access to land. The significance of this point cannot be understated given the prevalence of landlessness among the very poor in Nepal, Bangladesh, India, Afghanistan, and Pakistan. In Pakistan, for example, less than 50% of rural households own agricultural land and 40% of agricultural land is owned by 2.5% of households. And, in India, landlessness is the best predictor of poverty; an even better predictor of illiteracy or membership in a scheduled caste or tribe.⁵

3. Approaches to designing interventions

As should be apparent from the discussion above, women's inheritance rights are beset with both legal and cultural obstacles. These obstacles are highly contextual, and can vary widely among countries, regions, religions, tribes, clans, ethnic groups, castes, and class. What is feasible in one community may not be in another. Yet, field studies on inheritance practices are rare. Even rarer are documented perspectives of women on what interventions would help secure their rights to property. Designing interventions from a distance without adequate information from the field may run the risk of being inappropriate for the context or, in some cases, may make things worse for women. The following interventions are thus intentionally generalized in nature and are geared more towards raising awareness, raising flags that will require study for their relevance in a given setting, and identifying possible means to address the cultural change that will be required to ensure equity in property rights for women and men.

Speak to women about property rights for women

Before any action is taken to amend discriminatory laws or design a land-related intervention, it is imperative that it be driven by what is feasible, possible and desired by the women that the intervention seeks to assist. Since customary rules often govern women's lives, attempting to change custom can be very threatening to women and men alike. Any planned intervention must include significant efforts to solicit information from women about the rights that they want for themselves, their daughters, their children, and their

⁵ World Bank, *India: Achievements and Challenges in Reducing Poverty* (World Bank Country Study), (1997 World Bank, Washington D.C.)

future with regard to safety, protection, survival. Ask women what might be feasible and desired with regard to property rights.

Work with men to champion the property rights of women.

Gaining inheritance rights for women requires social and cultural change. In patriarchal cultures, men are the powerbrokers; gender equity in property rights cannot be achieved unless some critical mass of men are convinced that it is worthy of their support. Thus, projects intended to promote gender equity must explicitly target men as well as women. Engaging men, especially opinion leaders and those who wield local influence, is a critical and oft-overlooked strategy in assisting that change.

Understand the specific role of customary, religious and formal laws for women noting that the relevant roles may be different across regions, tribes, clans and class. Research and generate baseline information on women's land rights under customary, religious, and formal laws.

It was clear during this study, that there continues to be a lack of reliable information on the real impact of formal and customary personal laws on women's inheritance rights. When it comes to customs, this is understandable since practices may differ widely among and between regions, tribes, clans, ethnic groups, class and caste. However, there are number of NGOs who focus on understanding the complexity and impact of personal laws on



women's property rights. These are most effective when linked with other interventions, such as when the research informs policy advocacy and lobbying, but identifying the real obstacles to women's property rights is an important first step. In some cases, if an NGO develops a reputation for credible research practices, that in itself can help to forward the policy agenda. This is the case with the Afghan NGO Afghan Research and Evaluation Unit, an independent research organization based in Kabul. Amongst other things, it has conducted studies on land tenure in Afghanistan which influence and

inform policy and practice on a national level and also influences the design of development projects for the country. Likewise, the Muslim Women's Research and Action NGO in Sri Lanka begins all of its activities with action research on law and status of Muslim women which it then uses to inform its mobilization and legal counseling activities.

Legal awareness, legal literacy, and legal aid

Many NGOs have identified in their assessments that there is a general lack of awareness amongst women and men about women's property rights and how they can be effectuated. One NGO in Pakistan, Shirkat Gah, has had some successes by doing something as simple as assisting parents in completing the marriage certificate correctly. In Pakistan, under

Shari'a law the marriage certificate is the one place where the property arrangements between spouses are recorded. In their research, Shirkat Gah found that these certificates were not completed correctly by parents and that later, if there was an issue in the marriage or a death, the woman's property rights as agreed to at the beginning of the marriage were not recorded anywhere, and there was thus no evidence of the agreement that had been made. They found that by helping parents fill in the form, the forms became legitimate protection for the woman's rights in the relationship.

Initiate debate with policy makers, NGOs, networks, and advocates towards creating social legitimacy for women's land rights and control over resources.

Advocacy and lobbying may be one of the most common types of interventions amongst the NGOs identified in the study. The Aga Khan foundation in Bangladesh works directly with locally elected female officials, to improve their knowledge of the factors which prevent women from realizing their property rights, with the view that they will become political advocates on those issues. Another NGO in Bangladesh takes a slightly different approach with its advocacy campaigns. The Center for Development Services (CDS) conducts interactive and informative media campaigns on women's property rights, taking a human rights based approach. The CDS focus, however, is on the boys and girls who will be the women and men of the next generation. Similarly, in Pakistan, the Aurat Foundation works specifically on publicizing the issues around property rights for women in the mainstream media during election times. The basic premise being that women and men both can use their voting power to affect the policy position of candidates running for election. They have advocated for including women in land rights distribution schemes, enforcement of inheritance laws, and changes in laws that will permit equal ownership of property that has been purchased by both spouses.

Legal Change

While it is true that legal change alone is insufficient to ensure women's inheritance rights in face of customary laws, a strong legal foundation can be an important and necessary first step. However, some legal reforms may be more readily acceptable to women and men than others, and part of the process of legal change must involve listening to the women to understand what legal rights are most important to them, as recommended above. In India, the Women's Resource Access Programme (WRAP) does this via a network of grass roots civil society organizations. It seeks to train and strengthen the capacity of civil-society organizations to listen, document and share rural poor women's views and perceptions on the importance of resource access to increase their ability to influence local, national and international decision-making processes. Likewise, the Nepalese Forum for Women, Law and Development (FWLD) is an NGO whose mission is to eliminate all forms of gender discrimination in Nepal. Among other things, they conduct research on socio-legal issues facing women, lobby for legal reform, and then seek to use laws as instruments of social change.

... part of the process of legal change must involve listening to the women to understand what legal rights are most important to them ...

Land leasing, purchase, or allocation programs for women

Recognizing that some land reforms of the past were not addressing the issues of women's rights, some state governments of India have begun allocating land to landless families in the name of the wife in the family. In West Bengal, a new government allocation program identifies landless and homestead-less families in the target area and purchases land from large landowners who are willing to sell at the market price. The family receives a transfer deed, or *patta* which is in the name of the wife. West Bengal also has a longstanding program to expropriate private land owned above a statutorily set ceiling and allocating that land to landless families. Providing the *pattas* in the sole name of the wife is a recent revision to the program which has provided land to approximately 1.5 million families.⁶ The underlying expectation is that a woman will gain more power within the household and thus be less prone to abandonment or domestic abuse if she is the owner of the land that the family relies on for its survival.

4. Conclusion

In South Asia, as in many regions of the world, women do not usually inherit land. The reasons for this are many and varied and can be different for different groups of people. On the one hand, formal law may be discriminatory. On the other hand, formal law that is equitable is often largely irrelevant in the face of customary law that does not recognize equitable property rights for women. Such customary rules related to marriage and other social relations often significantly constrain a woman's right to inherit.

In addition, other social pressures, related to poverty, women's lack of mobility and lack of financial security may influence whether a woman will claim any legal right to inherit she may possess.

Changing norms and behavior is no simple task, but there are many NGOs operating in South Asia who seek to do just that.

Understanding the complexities of formal and customary personal laws is the key to any intervention that seeks to address women's inheritance rights to land property. Also, because inheritance involves cultural practices, changes in inheritance behavior require cultural change. Changing norms and behavior is no simple task, but there are many NGOs operating in South Asia who seek to do just that. Many of the local NGOs identified in this study approach this in different ways, most often beginning with a research and then moving to advocacy, awareness-raising, or enforcement of rights. Underlying all such activities on women's property rights is the tacit recognition that there is no panacea: helping to alleviate poverty and improve the lot of the rural poor requires a concerted and multi-faceted effort towards equity in women's inheritance and property rights.

⁶ Tim Hanstad and Robin Nielsen, *From Sharecroppers to Landowners: Paving the Way for West Bengal's Bargadars*, at 10, Rural Development Institute Reports of Foreign Aid, # 121, 2004.

5. Case Studies

Afghanistan

I. Background

a. Legal and Political Overview

Afghanistan is a mountainous landlocked country located approximately in the center of Asia. The country has a total land area of 647,500 square kilometers, 12 percent of which is arable, 46 percent is used as permanent pastures,⁷ 3 percent of which is forests and woodland, and the remaining 39 percent of which is put to other uses. Approximately 80 percent of the country's estimated 32.7 million people live in rural areas.⁸

Afghanistan has suffered from chronic instability and conflict in recent years and its economy and infrastructure have failed. Many Afghan people are refugees. After the fall of the Taliban administration in 2001, Afghanistan became an Islamic republic and is currently comprised of 34 provinces. The new constitution was ratified in January of 2004. President Hamid Karzai became the first democratically elected President of Afghanistan on December 7, 2004. The legal system is based on statutory, customary, and Shari'a laws. Under Afghanistan's Constitution, land issues are matters for legislation and control by both the central and provincial governments. Yet women's land rights are governed by personal laws.

b. Geography and Environment

Usable farmland comprises a mere 12 percent of the country's land area.⁹ Pastureland is the greater productive area, constituting 45 percent of Afghanistan's total land area. This supports an immense livestock population owned by both settled farmers and semi-nomadic and nomadic populations.¹⁰

c. Demographics and Social Data

Afghanistan has more than 40 ethnic groups, the largest of which is the Pashtun (53%), who generally reside in the eastern and southern regions. The Tajiks in northeast (17 %) and Turkic groups in northern plains (20%) are the second and third largest groups. Beginning in the late 1800's through the early 1990's, Afghanistan's leaders have colonized land and extended their authority for more than 100 years by empowering local Pashtun with land grants and attendant authority over the rural population. (Ahmad 2004; Alden Wiley 2003)

⁷ See Library of Congress – Federal Research Division, *Country Profile: Afghanistan* (2006), available at <http://memory.loc.gov/frd/cs/profiles/Afghanistan.pdf> last visited, December 14, 2009

⁸ United Nations Population Fund, *State of World Population 2007: Unleashing the Potential of Urban Growth*, 91 (2007), available at, http://www.unfpa.org/swp/2007/presskit/pdf/sowp2007_eng.pdf; (hereinafter "UNDP"); Population Reference Bureau, *Afghanistan Demographics*, available at <http://www.prb.org/Countries/Afghanistan.aspx>.

⁹ See FAO, *Provincial Land Cover Atlas of Islamic State of Afghanistan* (FAO 1999).

¹⁰ Liz Alden Wily, *Land Rights in Crisis: Restoring Tenure Security in Afghanistan*, Afghanistan Research and Evaluation Unit, 2-3 (2003).

d. Economics

Afghanistan is extremely poor, and remains highly dependent on foreign aid, agriculture, and trade with neighboring countries. Much of the population continues to suffer from shortages of housing, clean water, electricity, medical care, and jobs. Expanding poppy cultivation and a growing opium trade have boomed since the fall of the Taliban and Afghanistan supplies about 93 percent of the world's opium. Approximately eighty percent of Afghanistan's population is rural and eighty percent of the total workforce still works primarily in agriculture.¹¹

e. Land and Natural Resources

Rural land ownership is highly skewed. Five percent of the farms in the country are located on 40% of the arable land. Seventy-three percent of farms are less than five hectares. Average farm size is 1.6 hectares.¹²

Afghanistan has a largely rural population with a high number of landless peoples. A significant percentage of Afghanistan's rural people are landless or near-landless (owning farms too small for survival), contributing to agricultural production, as sharecroppers, laborers, or tenants.¹³ Farm laborers generally receive 1/5 of the crop as payment and sharecroppers up to 1/3, insufficient to live on.¹⁴ Well over half the rural population is below the poverty line. A large number of rural families are homeless as well as landless, depending upon landlords or relatives for shelter, generation to generation.¹⁵

f. Disadvantaged Groups

Nationally, 21% of rural households are landless. The poorest households are those headed by women and the landless. Almost five million refugees have returned to Afghanistan from Pakistan and Iran since 2002, a majority of whom are landless or who returned to find that their land had been taken in their absence. They are often forced to join the growing population inhabiting squatter settlements in urban areas. Two million more refugees wait in Pakistan, 90% of whom reportedly have no access to land or housing in Afghanistan.¹⁶

g. Local Land Related Challenges

Afghanistan's farmland, pastures, forests, and water resources have suffered from successive years of extreme drought and extended conflict. The population's traditional methods of

¹¹ UNDP *supra* note 7 at 25; USAID, *USAID Assistance to Afghanistan*, 1 (2006) available at http://pdf.usaid.gov/pdf_docs/Pdacg272.pdf.

¹² Alden Wily, *supra* note 9 at 4.

¹³ UNDP *supra* note 7 at 25

¹⁴ *Id.*

¹⁵ Alden Wily, *supra* note 9 at 4.

¹⁶ Maletta, Hector, *Arable Land Tenure in Afghanistan in the Early Post-Taliban Era*, African and Asian Studies, Vol. 6, No. 1-2 (2007); and see Koser, Khalid and Suzanne Schmeidl, *Displacement, Human Development and Security in Afghanistan*, DOHA Discussion Paper, 2009 U.S. Islamic World Forum, available at http://www.brookings.edu/~media/Files/rc/papers/2009/0216_afghanistan_koser/0216_afghanistan_koser.pdf, accessed 18 November 2009.

coping have been undermined by soil degradation, deforestation, and flooding caused by unsustainable land use practices, military action, and chronic insecurity of livelihoods. Land ownership is concentrated in the hands of a few. An elite minority has traditionally owned disproportionate areas of the total land, with surveys indicating that 2.2 percent of the population owned 19 percent of the total land area in 2002.¹⁷

Yet, uncertainty over land tenure in Afghanistan is high. This is partially due to high regional variation also because of the highly intertwined markets for sharecropping and land mortgaging. Sharecropping and land mortgaging in particular involve a web of relationships in which it is difficult to distinguish creditors/debtors from owners/sharecroppers, or to know precisely who the legal or accepted right-holder of the property is.¹⁸ Further complicating matters is the fact the country lacks a clear regime for managing land rights and with the increased instability and coercion by warlords in the last decade, land rights management and dispute resolution has lost credibility in many rural areas, resulting in rural Afghans' tend to rely on customary methods to regulate their land tenure relations, which favors wealthier elites, men, and dominant ethnicities.¹⁹

h. Women's Property Ownership, Activities and Employment

Women's lives in Afghanistan are highly proscribed. Since most of them don't work, women usually want to marry to have a better life and believe that marriage is the only option to have financial security and an opportunity to live with less stress from their family.²⁰ Women hardly have a say in their marital life and most people are unaware of women's rights under the formal or religious law.

There is strong opposition from men to allowing women more liberties or granting them their Islamic marital rights and this causes serious problems for Afghan women who are deprived of their basic rights and education, and suffer many social and personal restrictions in their daily life, such as house detention and abuse.²¹



¹⁷ For instance, while "most" own their land in the mountainous east and northeast, landlords, sharecroppers and laborers are most common in the southern fertile plains around Kandahar.

¹⁸ Alden Wily, *supra* note 9 at 2-3.

¹⁹ *Id.*

²⁰ Max Planck Institute for Foreign Private Law and Private International Law, *Family Structures and Family Law in Afghanistan: A Report of the Fact-Finding Mission to Afghanistan*, 16 (2005) available at http://www.mpipriv.de/shared/data/pdf/mpir-report_on_family_structures_and_family_law_in_afghanistan.pdf last visited December 13, 2009 (hereinafter "MPI")

²¹ *Id.*, at 16

i. Land Policy and Reform

Land reform efforts in 1970s were intended to limit the size of land holdings and distribute the surplus to landless and near-landless households. The reforms were largely unsuccessful because they lacked support in the rural areas, were technically flawed, and spawned violent reactions among landowners that deterred implementation.²²

II. Legal and Customary Land Rights for Women

a. Legal Overview

Afghanistan has a pluralist legal system. Land rights are governed by customary law, religious law and state law. Customary law (*rawaj*) governs how land is owned and transacted as established through community practice and adherence by members to group norms. They also govern women's rights to land. Customary rules are rarely codified and appropriately change with time. Pashtunwali (Pashtun customary law) is one of the more elaborated operating laws, and dominates the norms in many areas. Shariat and custom often conjoin on land matters, except with respect to usury, women's land rights and common property rights. The former is more liberal — and generally less adhered to because of this.²³

Afghanistan has a pluralistic legal system.

State law includes the civil code, statutory law and supreme or constitutional law. The Civil Code is a written expression of mainly Islamic law principles and includes more than 1,000 directives relating to property. The Code was compiled in the 1970s building in large part on historical treatments of the Hanafi school of Islamic jurisprudence.²⁴

Religious law (Shariat or Shar'ia) in its original rules as laid down in the Koran and expressed in many scholarly treatises, may be directly applied when the issue is not covered in the Civil Code. Similarly, the Civil Code is only applied if the issue is not covered in state law. Land cases are officially dealt with in civil courts, which rule on the basis of state, civil and religious law, in uncertain mix and measure.²⁵

... customary law dominates in Afghanistan.

Despite the pluralism, customary law dominates in Afghanistan. While the Constitution is silent on the authority of customary law it prohibits adoption of laws that are inconsistent with the tenets of Islam and the Civil Code recognizes the application of customary law with regard to land rights. Customary law is in large measure consistent with Shari'a, and Shari'a permits the practice of customary law so long as it does not interfere with tenets of Islam. Customary law systems vary between regions and tribes. It is generally understood that those refuse the application of customary

²² Liz Alden Wily, *Putting Rural Land Registration in Perspective: The Afghanistan Case*, AREU, 4 (2004).

²³ Alden Wily *supra* note 9 at 3

²⁴ *Id.*

²⁵ *Id.*

law will be condemned by their families and have no real choice to refuse its application.²⁶ However, even when the decisions of the jirgas (local dispute resolution actors) are not in accordance with Islamic law, the participation of religious figures in the decision-making of the jirga makes people believe that the decision complies with Islamic law.²⁷

b. Marriage

The Afghan Civil Code governs all marriages in Afghanistan.²⁸ However, in practice, all marriage practices are almost entirely governed by custom. Some customs related to marriage are outlined below.

In Afghanistan, a man and a woman rarely meet before their wedding. This is especially the case in tribal and rural areas where women are considered personal property of the men and part of their honor. The seclusion of women and segregation of gender prevent any contact between eligible men and women before marriage. There are some variations in this belief

amongst urban, educated, or wealthy elites.²⁹



An Afghan woman has the right to dower, or *mahr*, which is derived from Islamic law and enshrined in the Afghan Civil Code. However, women often don't know about their right to *mahr* and its importance or they may undervalue the *mahr* because of its association with divorce which is culturally unacceptable.³⁰ Though illegal, *walwar* is common in Afghanistan especially among the poorer rural families, and

is understood as a compensation for the family of the bride for having nursed the girl. The amount of *walwar* is not fixed and may vary according to the economic background of the bride's family.³¹ Generally, if the bride's family is rich, they will not ask for *walwar*; but if the

²⁶ MPI *supra* note 19 at 9

²⁷ MPI *supra* note 19 at 10

²⁸ See Afghan Civil Code (1977), Chapters 1-2, Official Gazette No. 353, published 1977/01/05 (1355/10/15 A.P.), an incomplete translation can be found at <http://www.asianlii.org/af/legis/laws/clotroacogn353p1977010513551015a650/>

²⁹ MPI *supra* note 19 at 10.

³⁰ *Id.* at 11-13

³¹ *Id.*

bride's family is poor, *walwar* will be the single most important issue during marriage negotiations as it is important income for the bride's family.³²

Marriages of minors and forced marriages are also prevalent in Afghanistan, even though they may contradict Islamic principles. They emanate from such traditions as: *badal*, or the exchange of girls between two families as additional wives; marriage promise, where an unborn girl is promised to an unborn boy; *badd*, where girls are given into marriage for compensation for a crime, marrying a member of the victim's family to ensure future peace between the two families; and the negotiation of marriages simply so the brides' family can receive the *walwar*.³³ It is primarily weak economic conditions that encourage families to marry their minor girls. This tendency has grown with the growing influences of warlords, who can pay great amounts of money to the parents of the girl. In these cases, the parents will agree even if their girls are still minors.³⁴

According to Islamic law and the Afghan Civil Code, polygamy is a legal institution whereby a man can marry up to four wives simultaneously. However, the conditions set for multiple marriages, such as the equal treatment of all wives, are not observed in practice by the bride's parents or the polygamous husband. In urban areas, polygamy is hardly practiced. Only exceptionally, particularly in issues revolving around succession, polygamy also occurs in urban areas (e.g. if the first wife has had no sons).³⁵

c. Divorce, Separation and Abandonment

The incidence of divorce is very low in Afghanistan. Divorce is seen as a bad thing, the social prestige of a divorcee is very, very low, and for the majority of women, living alone is not an option.³⁶ As mentioned above, although Islamic law provides for property rights for women after a divorce, which are to be stipulated during marriage negotiations, the social stigma against divorce is so great that those negotiations do not take place very often.

d. Inheritance and Division of Property

In Afghanistan as a whole, customs and Islamic rules predominate in questions of inheritance. Despite their intimate relationship with agriculture and the land, in practice Afghan women are typically denied of their legal rights to inheritance and ownership over land or any other immovable property by culture, traditional, and tremendous societal pressure.

While civil law grants women the right to inherit land, few women, especially daughters, inherit in practice.³⁷ Under Shari'a law women have rights to inherit both as daughters and as widows, however, divorced women enjoy no rights to their husbands' property. Widows are to receive one-eighth of the property or one-fourth if they have no children. Where the

³² *Id.*

³³ *Id.*, at 17-18

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Jo Grace, *Who Owns the Farm? Rural Women's Access to Land and Livestock*, Afghanistan Research and Evaluation Unit, 17 (2005).

marriage was polygamous, this proportion is shared among all the wives. The provision for widows is the priority.³⁸

Widows, particularly those living in separate households (i.e. not with other related families), more readily receive their share of the land.³⁹ Still, these widows often transfer the land into their sons' names to avoid any confusion later on, although they do retain some control over the land. Sons may still consider the land to belong to their mother.⁴⁰ In contrast, widows, living in joint households, often do not receive their inheritance share of land because the land has not been

divided and all land is shared in the family.

... daughters are legally entitled to half their brothers' share of the parental property ... rarely receive or accept their share of land.

While daughters are legally entitled to half their brothers' share of the parental property, under Shari' a law, in practice daughters rarely receive or accept their share of land. This is because it is culturally inappropriate for a woman to own land outright since the expectation is that she is cared for by her husband. Also, they may refuse their share and give it to their brothers out of respect for their brothers and also so that they maintain peaceful relations with brothers who are their social protection in the case of divorce or widowhood.⁴¹

III. Key NGOs Working on Women's Land Rights

Afghanistan Research and Evaluation Unit (AREU) www.areu.org.af

AREU is an independent research organization based in Kabul whose mission is to conduct high-quality research that informs and influences policy and practice.

Afghan Women Council (AWC) www.afghanistanwomencouncil.org

AWC is a non-profit founded in Peshawar, Pakistan in 1986 to support the Afghan refugees, which aims to assist Afghan women and children. Working in Afghanistan since 1992, AWC's predominant objective is to empower women by building their capacity, improving their health, education, and living conditions, and by strengthening their socio-economic status in society by multi-lateral involvement in development activities.

Afghan Women's Network (AWN) www.afghanwomensnetwork.org

AWN is a network of 72 NGOs and over 3,000 individuals working for the promotion of Afghan women's empowerment, rights and equal participation in society. AWN is considered the only umbrella entity for women/gender-based organizations in Afghanistan. Most of the member NGOs focus on training women skills – education, literacy, productive products (e.g., tomato paste), shoemaking, sewing, carpentry, handicraft, cheese making, IT and website, finances – as well as women rights – rights, available social services, violence against women

³⁸ *Id.*

³⁹ *Id.*, at 19.

⁴⁰ *Id.*, at 17.

⁴¹ *Id.*

Bangladesh

I. Background

a. Legal and Political Overview

Bangladesh has a complicated legal foundation based largely on its political history. Europeans began setting up trading posts in the area of Bangladesh in the 16th century. Eventually, the British came to dominate the region and it became part of British India. In 1947, West Pakistan and East Bengal (both primarily Muslim) separated from India (largely Hindu) and jointly became the new country of Pakistan. In 1955, East Bengal became East Pakistan, but the awkward arrangement of a country consisting of two disconnected geographies left the Bengalis marginalized and distanced from the central government.⁴² In 1971, East Pakistan seceded from its union with West Pakistan and was renamed Bangladesh.

After nationhood, Bangladesh has experienced many political upheavals with short periods of relative peace which rendered many legal, social and political institutions very weak. Elections were held in 2008 after one year of the military-backed caretaker government, and Sheikh Hasina Wajed was reappointed prime minister.⁴³

b. Geography and Environment

Bangladesh is located in Southern Asia, bordering the Bay of Bengal between Burma (Myanmar) and India. Slightly smaller than the state of Iowa, Bangladesh covers approximately 144,000 square kilometers.⁴⁴ Bangladesh is at the nexus of Ganges-Brahmaputra-Meghna (GMB) river systems, the second largest river system in the world. The GMB drains an area of 1,086,000 square kilometers from China, Nepal, India and Bangladesh. Because of this unique geophysical location, the country has been endowed with rich biological diversity, hosting a rich variety of species superbly evolved to populate the ecosystems of the country.⁴⁵

However, also due to its unique terrain, Bangladesh is among the most disaster-prone countries in the world. It suffers from drought in the dry season and flash floods, rise of riverbeds, cyclones, storm surges and salt water intrusion. In addition, because floodplains of the major rivers and their tributaries constitute about four-fifths of the country, during the wet season, about 20-25 percent of Bangladesh remains under water.⁴⁶

In addition, Bangladesh's resources must be shared among a very large and growing population and many resources are degraded or destroyed. Current estimates suggest that

⁴² Central Intelligence Agency, *The World Factbook: Bangladesh* (May 14, 2009), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/bg.html> last visited December 8, 2009.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ U.S. Agency for Int'l Development, *Bangladesh: Environment* (February 2, 2009), available at <http://www.usaid.gov/bd/programs/envIRON.html>, last visited December 8, 2009.

⁴⁶ Gov't of People's Republic of Bangladesh, *Bangladesh Poverty Reduction Strategy Paper*, (2005) at 21,102, General Economics Division, Planning Commission (hereinafter "Poverty Reduction Strategy").

95% of Bangladesh's natural forests and 50% of its freshwater wetlands have been lost or degraded and Bangladesh now has among the smallest areas of protected and intact forest in the world, consisting of 1.4% of its landmass. ⁴⁷ Moreover, many terrestrial wildlife species have been lost during the last 100 years and classified 40% of Bangladesh's freshwater fish species have been classified as threatened with national extinction.

c. Demographics and Social Data

Bangladesh was estimated to have a population of 156,050,883 in July 2009. The age structure is young and breaks down to: 0-14 years: 34.6% (male 27,065,625/female 26,913,961), 15-64 years: 61.4% (male 45,222,182/female 50,537,052), and 65 years and over: 4% (male 3,057,255/female 3,254,808).⁴⁸ The population of Bangladesh is 98% Bengali, and 2% other tribal groups and non-Bengali Muslims. Approximately 83% of Bangladesh is Muslim, 16% Hindu, and 1% other religious affiliations. The two national languages are Bangla (or Bengali) and English; laws written after independence are in Bangla.⁴⁹

Bangladesh has about forty-five tribal (or "adivasi") minority communities living both in the hill regions and in the plains. The largest concentration is in the Chittagong Hill Tracts, but other areas in which these communities live include Chittagong, greater Mymensingh, greater Rajshahi, greater Sylhet, Patuakhali and Barguna. Chakma, Garo, Manipuri, Marma, Munda, Oraon, Santal, Khasi, Kuki, Tripura, Mro, Hajong and Rakhain. Though firm figures are not available, the ethnic minority population is estimated to be around 2 million.⁵⁰ Relations between the government and these minority groups have not been stable.⁵¹

d. Economics

Most Bangladeshis are rural. Three-quarters of the country's total population and 85 percent of the total number of the poor live and earn their livelihood in the rural areas. Agriculture makes up around 25% of the GDP, and the rural non-farm sector makes up an additional 30%. Agriculture generates two-thirds of total employment, contributes a quarter of total export earnings and provides food security to the increasing population.⁵² The current labor force is estimated at around 50 million.⁵³

Many Bangladeshis are poor. While incidence of poverty was in decline by official estimates, from a high of 57% of the population in the 1990s to 40% in 2005, the Gini coefficient of consumption has remained stable in that time. However, recent shocks from natural disasters and a sharp rise in food prices have dampened economic growth.⁵⁴

⁴⁷ U.S. Agency for Int'l Development, *supra* note 44.

⁴⁸ Central Intelligence Agency, *supra*, note 41

⁴⁹ *Id.*

⁵⁰ Poverty Reduction Strategy *supra* note 45 at 155-56.

⁵¹ *Id.*

⁵² Poverty Reduction Strategy *supra* note 45 at 87; see also World Bank, *Bangladesh: Semi-Annual Economic Update*, World Bank, Washington D.C., (2009), available at <http://siteresources.worldbank.org/BANGLADESHEXTN/Resources/295759-1240107707312/6037991-1240107728636/BDUpdateApril172009.pdf>, last visited December 8, 2009.

⁵³ World Bank, *supra* note 51 at 6.

⁵⁴ World Bank, *Poverty Assessment for Bangladesh: Creating Opportunities and Bridging the East-West Divide*, 2008, at iv, Report No. 44321-BD, available at <http://www->

Poverty in Bangladesh is mainly rural. Seventy-seven percent of rural households say they are at break-even or deficit status. Within this bracket, 18% comprise the hardcore poor who are always in deficit. The rural poor are traditionally the most natural resource dependent and landless communities whose lives are totally dependent on natural capital.⁵⁵

e. Land and Natural Resources

Seventy-percent of Bangladeshis depend on natural resources for their livelihoods. Degradation of natural capital and biodiversity has a serious and direct impact on the food security, nutrition and income of the poor.⁵⁶ This is especially the case for water and fish resources. The people of Bangladesh have a historical dependency on the floodplain system as a source of income and food security. An estimated 70 million rural households rely on the wetlands to survive. These resources are estimated to supply between 60% and 80% of the animal protein needs of the country. Between 1995 and 2000, freshwater fish consumption fell by 38% among poor wetlands inhabitants. Open water fish that once supplied 80% of the animal protein consumed by the rural poor, now supply less than 60%.⁵⁷

f. Disadvantaged Groups

In Bangladesh, there are small groups of extremely disadvantaged poor people. Among these are the refugees, the disabled and certain groups who are associated with a particular occupation. In regard to the latter, although in Bangladesh there is no caste system per se, these groups have the same social status as the lower castes in a caste system. Some of these communities are *Bawalies* (those who live of the resources of the Sunderban forest areas) and *mawalies* (honey collectors in Sunderban areas); *Bede* or river gypsy (engaged in snake charming and small trade in the rural areas); *Methor*, *Dalich* (sweepers, sewerage cleaners and scavengers); *Mymal* (fisherman on the big water bodies); *Muchis* (cobblers and shoe makers); *Nagarchi* (traditional folk singers); *Kulies* (tea garden worker originally brought to Bangladesh from various parts of India).⁵⁸ These communities have been living a segregated life, parallel with the mainstream population, for many years. They are spread all over the country and constitute a portion of those who are classified as the extreme poor and often live in very challenging conditions.

g. Local Land-Related Challenges

Land as a resource is under enormous pressure in Bangladesh. On the one hand, Bangladesh loses around one percent of arable land annually to degradation and natural disaster, and on the other hand, it is under the pressure of a rapidly growing population and the competing needs of subsistence farming, the agricultural sector, industry, housing, and urbanization.⁵⁹

wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/12/10/000333037_20081210001004/Rendered/PDF/443210ESW0P09910Box334107801PUBLIC1.pdf last visited December 8, 2009

⁵⁵ U.S. Agency for Int'l Development, *supra* note 44.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Poverty Reduction Strategy *supra* note 45 at 160.

⁵⁹ *Id.* at 97.

In addition, unequal land distribution is a major source of rural income inequality. The number of effectively landless households is increasing.⁶⁰ In 1995, the number of rural landless households, defined as those with less than 0.2 hectares of land, was estimated to be 49.6%. Most of landless in rural areas are poor and work as agricultural wage laborers.⁶¹

h. Women's Property Ownership, Activities and Employment

Access to property for women is still a distant goal in Bangladesh. Although equality is enshrined in the legal system, in 1996, only 3.5 percent (0.62 million) out of 17.8 million agricultural holdings were female owned.⁶² Women's ownership of homesteads is only slightly higher than their ownership of agricultural land and women are more likely to own the homestead if it is not attached to cultivable land.

Most Bangladeshi women are employed in the informal sector. According to official estimates as of 2003, only 26 percent of women ages 15-59 were employed in the formal sector, and only 10 percent of employed women and 22 percent of employed men, aged 20-55, receive any cash wages.⁶³ In addition, women who are employed year-round earn 60-65% of what their male counterparts do in the agricultural sector.⁶⁴ Just a little over 4 percent of all women and 13 percent of employed women are casual workers in Bangladesh.⁶⁵

Women in Bangladesh are mostly involved in homestead based activities contributing to the household nutrition intake. Women are customarily involved in the post-harvest processing of crops, rearing of livestock animals and poultry birds, and home-gardening of fruits and vegetables. To the extent that they sell the products themselves, they do contribute to household savings, expenditures, and investment, and there are some poor rural women who earn from lending their small savings to various productive rural enterprises.⁶⁶ Women are also formally and informally engaged in the fishing industry, which is the second most important occupation for them in the non-farm sector.

i. Land Policy and Reform

Land administration in Bangladesh today is firmly rooted in colonial era practices. The British gave high priority to the organization of a centrally controlled management system that was designed to maintain political control and secure a steady source of state finance. Relatively little has changed in the post-independence era.

Attempts at reform through land ceilings and redistribution have been a feature of both the Pakistan and Bangladesh periods. In 1984, in a populist move by the Ershad regime, a new

⁶⁰ *Id.*

⁶¹ Habibur Rahman and Somprawin Manprasert, *Landlessness and its Impact on Economic Development: A Case Study on Bangladesh*, 55, *Journal of Social Sciences*, 2(2), (2006) (citing Krishna B. Ghimire, *Peasants' Pursuit of Outside Alliances in the Process of Land Reform: A Discussion of Legal Assistance Programmes in Bangladesh and the Phillipines* (UNRISD Discussion Paper No. 102, March 1999).

⁶² World Bank, *Whispers to Voices: Gender and Social Transformation in Bangladesh*, at 76 (2008) Bangladesh Development Series, Paper No. 22 (hereinafter "Whispers to Voices").

⁶³ *Id.* at 55

⁶⁴ *Id.* at 55.

⁶⁵ Whispers to Voices *supra* note 61 at 66 (Box 4.4). See also Poverty Reduction Strategy *supra* note 45 at 78.

⁶⁶ Poverty Reduction Strategy *supra* note 45 at 97; Whispers to Voices *supra* note 61 at 58 (Box 4.2).

Land Reforms Ordinance was promulgated. The ordinance set a new land ceiling at 20 acres (8.1 hectares) per family, and stipulated that *baragadars* (sharecroppers) had the right to cultivate five acres of land. This was to be explicit in a legally binding contract between the landowner and the *baragadar*, thus doing away with the tradition of oral contracts, which proved to be increasingly precarious. The contract set up the terms and conditions of cultivation and was valid for five years, and could be renewed if the conditions were satisfactorily met by the sharecropper. Furthermore, the ordinance included a clause giving the sharecropper the option of purchasing the land. It obliged the landowner to give notice of intent to sell, and the sharecropper had a period of 15 days to make an offer. With the provision of rural credit facilities, it was hoped that tenants would be able to secure loans and gain title to land in this way.⁶⁷

But these have largely been circumvented by the wealthy and powerful and, while tenants' rights are enshrined in law, they are largely ignored in practice. The Land Reforms Ordinance of 1984 has remained virtually unimplemented.⁶⁸ This is partially because of weak protections in the law, for instance, legally binding contracts aimed to guarantee security of tenure for the sharecropper permit a significant number of escape clauses for the landowner; land can be repossessed if the landowner believes that it is not being personally cultivated by the *baragadar*. Furthermore, the owner can simply decide to take back the land for personal cultivation. The vagueness of the terms could lead not only to land repossession, but potentially to eviction of sharecroppers. Land purchase by a sharecropper may also be circumvented by landowners who sell or give land to their relatives.⁶⁹

II. Legal and Customary Land Rights for Women

a. Legal Overview

The original Constitution of Bangladesh, effective in 1972, guaranteed equal rights to all citizens, regardless of gender, religion, and other social divisions. The constitution includes provisions granting equal protection under the law,⁷⁰ forbidding negative discrimination of women,⁷¹ providing equal rights for men and women in all spheres,⁷² and allowing positive discrimination, or making special provisions in favor of women for their advancement.⁷³

No uniform civil law exists in Bangladesh to govern family law matters, such as marriage, divorce, division of property, or inheritance.⁷⁴ Family law in Bangladesh is governed by the

⁶⁷ Krishna B. Ghimire, *Peasants' Pursuit of Outside Alliances in the Process of Land Reform: A Discussion of Legal Assistance Programmes in Bangladesh and the Philippines*, 9 (1999) UNRISD Discussion Paper No. 102.

⁶⁸ CARE SDU Reports & Studies, *Land Policy and Administration in Bangladesh 2* (2003), <http://www.carebd.org/Land%20Policy%20and%20Administration.pdf> (hereinafter "CARE").

⁶⁹ *Id.* at 9-10.

⁷⁰ Constitution of the Peoples Republic of Bangladesh (1972), article 27.

⁷¹ *Id.* at Article 28 (1)

⁷² *Id.* at Article 28(2)

⁷³ *Id.* at Article 28(4)

⁷⁴ See Office of the Law Commission, Bangladesh, *Report on a Reference by the Government Towards the Possibility of Framing out of a Uniform Family Code for All Communities of Bangladesh Relating to Marriage, Divorce, Guardianship, Inheritance, Etc.* (2005) (hereinafter "Law Commission"); Sara Hossain & Susan Turner, *Abduction for Forced Marriage – Rights and Remedies in Bangladesh and Pakistan*, 4 (University of London), <http://www.soas.ac.uk/honourcrimes/FMArticleHossain.pdf>

personal laws applicable to each community – Muslim, Hindu, Christian, Buddhist, and tribal communities have separate laws.⁷⁵

Much of the Muslim personal law is unlegislated, the basis for the law being classical Hanafi *fiqh* except where this has been amended by legislation. The Muslim Marriages and Divorces (Registration) Act requires civil registration of marriages.⁷⁶ Although there is no law to this effect, there is a custom in Bangladesh of inserting stipulations relating to property rights on divorce in the marriage contract.⁷⁷

The Family Courts Ordinance provides that the application of the personal laws of all Bangladesh is through Family Court of the state judiciary.⁷⁸ Family Courts have exclusive jurisdiction to try and dispose of suits relating to the dissolution of marriage, including those matters that pertain to property such as dower and maintenance.

The Child Marriage Restraint Act sets the minimum age of marriage as 21 for men and 18 for women.⁷⁹ Penal sanctions apply to those who contract an under-age marriage; however an under-age marriage is not invalidated by contravening the law.⁸⁰

The Bangladeshi Muslim Family Laws Ordinance⁸¹ governs, in part, the application process for contracting polygamous marriages (i.e., requiring the reasons for wanting to contract a polygamous marriage and certification attesting to the existing wife's or wives' consent). The Ordinance also establishes penalties for contracting polygamous marriages which contravene the law; but again, such marriages are not invalidated. In addition, there is no penalty for failing to obtain the existing wife's consent.⁸²

The Dissolution of Muslim Marriages Act⁸³ remains in force in Bangladesh, with amendments initiated in Pakistan by the Muslim Family Laws Ordinance 1961 and governs Muslim divorce.⁸⁴

b. Marriage

The majority of Bangladeshi marriages are arranged by parents⁸⁵ although men frequently exercise some influence over the choice of spouse. In middle-class urban families men negotiate their own marriages. Only in the most sophisticated elite class does a woman

⁷⁵ See Muslim Personal Law (Shariat) Application Act 1937, Act No. XXVI of 1937; Kamrul Hossain, *In Search of Equality: Marriage Related Laws for Muslim Women*, in *Journal of International Women's Studies*, 96, Vol. 5 #1, Nov 2003, at 96, available at

<http://www.bridgew.edu/SoAS/JIWS/nov03/marriage%20laws%20women%20Bangladesh.pdf>

⁷⁶ Muslim Marriages and Divorces (Registration) Act, 1974

⁷⁷ Hossain *supra* note 74, at 4.

⁷⁸ Family Courts Ordinance, 1985.

⁷⁹ Child Marriage Restraint Act, 1929, Act No. XIX of 1929.

⁸⁰ Hossain *supra* note 72 at 4.

⁸¹ Muslim Family Law Ordinance, 1961, Ordinance No. VII I of 1961.

⁸² Hossain *supra* note 74 at 4.

⁸³ Dissolution of Muslim Marriages Act, 1939, Act No. VIII of 1939.

⁸⁴ Hossain *supra* n 74 at 4.

⁸⁵ Nanda R., *Shrestha, Nepal, Bangladesh & Bhutan: A Global Studies Handbook*, 244 ABC-CLIO Oxford, U.K. (2002)

participate in her own marriage arrangements. Marriage generally is made between families of similar social standing.⁸⁶

Marriage practices are generally determined by cultural or religious norms.⁸⁷ However, a few facts cross those lines: early marriage is common; and the average age at marriage is about 16 years. Polygamy, divorce, and cross-cousin marriages are uncommon, although abandonment of women is quite common.⁸⁸ While the Dowry Prohibition Act⁸⁹ prohibits it, the payment of dowry is widespread in Bangladesh.⁹⁰ One study from the University of Bath claims that dowry payments can be more than 200 times the daily wage.⁹¹ It is customary for Bangladeshi women to leave their family home at marriage and take up residence with her in-laws. She is then expected to seek permission to visit her own home.⁹² The Muslim Family Law Ordinance permits polygamy of up to four wives for a Muslim man.⁹³

Marriage practices are generally determined by cultural or religious norms.

Marriage of the Buddhist is mostly arranged through consent of parents and the wedding is solemnized in the bridegroom's

house by pronouncing some religious and social mantras.⁹⁴ The various tribal communities of Bangladesh are guided by their respective customs and traditions in respect of their marriage systems.⁹⁵

c. Divorce, Separation and Abandonment

Women suffer when they become widowed, divorced or abandoned by their husbands. At present, widowed, divorced and abandoned women constitute about 11 percent of total married women.⁹⁶

⁸⁶ *Id.*

⁸⁷ Whispers to Voices *supra* note 61 at 5.

⁸⁸ Whispers to Voices *supra* note 61 at 111.

⁸⁹ The Dowry Prohibition Act, 1980, Act No. XXXV of 1980, Section 3 *penalizing the giving or receiving of dowry with imprisonment of up to five years or fine or both.*

⁹⁰ Faustina Pereira, *The Fractured Scales: The Search for a Uniform Personal Code*, n. 39 at 64 (Bhatkal & Sen, India)

⁹¹ Medical News Today, *Major Causes of Poverty in Bangladesh is Marriage Dowry*, Medical News Today, Oct 31, 2008 available at <http://www.medicalnewstoday.com/articles/127710.php>

⁹² Pereira, *supra*, note 89, n.33 at 63.

⁹³ Muslim Family Law Ordinance, 1961, Ordinance No. VII I of 1961.

⁹⁴ Whispers to Voices, *supra* note 61 at 5.

⁹⁵ Whispers to Voices, *supra* note 61 at 5.

⁹⁶ Poverty Reduction Strategy *supra* note 45 at 122.

Divorce is permitted in Muslim law. A Muslim husband may declare *talaq*, a separation which would lead to divorce without cause.⁹⁷ A wife may divorce her husband for a few narrow reasons,⁹⁸ and only when such power of divorce is delegated to her by her husband, this is known as *talaq-i-tafveez*.⁹⁹ Rural Bangladeshi women suffer a high incidence of irrevocable divorce, giving rise to numerous hardships for both parties. The practice, known as *bila* is largely a result of illiteracy and inadequate grasp of Islamic concepts.¹⁰⁰

Divorce is not legally possible for Hindus in Bangladesh as it is unknown in Hindu law. In Hindu law, marriage is regarded as an indissoluble union between husband and wife. Neither party to a marriage can divorce the other.¹⁰¹ Divorce is allowed in the Christian community according to the provisions of Divorce Act, 1869.¹⁰²

d. Inheritance and Division of Property

As in marriage, in Bangladesh, inheritance is governed by Muslim personal law or the law of the religion of the person to which it applies. The Muslim law of Inheritance is also a Quranic law prescribing specific shares for each individual's nearest relations including female heirs in the property left by a deceased person. The distribution of property of a deceased Muslim person is made according to the principle that within the limits of each class of heirs, the nearer in degree excludes the more remote. While Muslim women have the right to inherit in Bangladesh, many women forgo that right in exchange for *naior*, a right to visit her parents once or twice year.¹⁰³

The Dayabhaga school governs the system of inheritance for Hindus in Bangladesh. A Hindu woman's inheritance rights in Bangladesh are virtually non-existent. Under the Dayabhaga law, the right to inherit arises on the heirs capacity to confer salvation to the souls of the paternal and maternal ancestors through those who live. A widowed, sonless, or childless daughter cannot inherit, but unmarried daughters and daughters with sons can inherit.¹⁰⁴ A widow is only given a life estate to the deceased's property, and this is believed to be her inheritance.¹⁰⁵

⁹⁷ Pereira, *supra* note 89 at n 29 at 63.

⁹⁸ See Dissolution of Muslim Marriages Act, 1939, Act No. VIII of 1939, Art. 2.

⁹⁹ Pereira *supra* note 45 at 63.

¹⁰⁰ *Id.*

¹⁰¹ Whispers to Voices *supra* note 61 at 5.

¹⁰² *Id.* at 5.

¹⁰³ Pereira, *supra* note 89, n. 78 at 67.

¹⁰⁴ Pereira, *supra* note 89 at 44.

¹⁰⁵ *Id.*

The Succession Act of 1925¹⁰⁶ governs inheritance in the case of the Christians. Under this act, a wife will inherit one third of the intestate deceased's estate and the remaining two thirds are divided equally among lineal descendants regardless of sex.¹⁰⁷

Generally, son preference prevails in Bangladesh. For the most part, property is inherited along the male line. The basis for this norm is that daughters only "belong" to their natal family until they are married and parents should not live with their married daughters or accept financial help from them.¹⁰⁸

III. Key NGOs Working on Women's Land Rights

Centre for Development Services (CDS) Director: Md. Emdadul Haque,
cds@bdmail.net

CDS aims to conduct an interactive, informative media campaigns on women's property and inheritance rights; and to mobilize and train women to redress violations through advocacy. CDS has conducted research to identify discriminatory laws and customary practices that inhibit women from claiming property. Community-based "mobilizers" trained by CDS have conducted awareness-raising sessions that integrate messages on property and inheritance rights with street theater and folk songs. The mobilizers also provide information on changes made in personal laws in 1961 to mediation committees and local leaders to improve the resolution of local land disputes.

CDS took a human rights-based approach in its project, emphasizing how virtually every aspect of inheritance traditions in Bangladesh affords girls and women half of what boys and men receive. CDS aims to ensure that the next generation of women is more aware of their rights, and can in turn address violations and, ultimately, live as equals with full protection of the law.

Aga Khan Foundation Project Director: Rokhsana Kondker,
khanfoundation@bd.drik.net.

The Aga Khan Foundation seeks to increase the knowledge and abilities of locally elected women to advocate on property and inheritance issues. It recently provided information and skills training to 400 locally elected women so that they would be able to help promote awareness and action on issues and laws pertaining to property and inheritance rights. Participants were also introduced to the Women's Lawyers Network, which is funded by the Khan Foundation and can serve as a free legal resource at the local level. The Aga Khan Foundation also produced useful materials for participants to use and distribute in their local communities.

¹⁰⁶ The Succession Act, 1925, Act No. XXXIX of 1925.

¹⁰⁷ *Id* at Art. 33(a).

¹⁰⁸ *Whispers to Voices*, *supra* 61 at 75.

Madaripur Legal Aid Association (MLAA) Senior Program Coordinator: Md. Masud Karim, mlaa@bangla.net

MLAA aims to create a network of informed Muslim women leaders who can address gender equity issues and property inheritance rights. MLAA has developed a unified network of women leaders from grassroots women's groups, with which it provides information and logistical support for the promotion of women's rights. MLAA conducted a field survey to assess awareness of property and inheritance rights and Muslim inheritance law among local women. The survey results were used to develop informational materials. To date, about 300 leaders have been trained and 10,000 women informed of their rights. MLAA takes socioeconomic factors into account, such as when it had to take low literacy rates in target areas into account in its work to build networks of women leaders in local villages. According to MLAA, only about 32% of rural women in Bangladesh are literate, making the distribution of written materials difficult.

Association for Land Reform and Development (ALRD) <http://alrd.org>

ALRD is concerned with the coordination of NGO activities on land reform, as well as a legal aid program. ALRD is a member of the International Land Coalition, and is the federating body of 273 NGOs, peasant's and landless organizations in Bangladesh, which are involved in the struggle to establish land rights, rights to food, rights to livelihood, and rights of the indigenous people of minorities. It is currently the main organization in Bangladesh working exclusively on land reform issues. ALRD was set up in 1991 to respond to the problem of landlessness which continues to be one of the key challenges in the country.

ALRD takes several approaches including: (1) advocacy for agrarian reform (seminars, workshops, media campaigns, research publications); (2) cooperation with the government to implement reform (with the Land Reform Ministry); (3) building and mobilizing organizations and linking grassroots with other sectors (one current focus is to develop the capacity of newly elected women Union Council members and Councils as a whole to work to establish the rights of women to own land); and (4) documentation and information dissemination (well-known journal, LAND, produced by practitioners, development and research activists).

India

I. Background

a. Legal and Political Overview

The British came to India as traders in the 17th century and gradually conquered the entire sub-continent. They established their own courts and judges. The law administered was British law as extended to India, however, in matters of personal law, the British applied the personal laws of the subject. A substantial portion of the Hindu Law has been codified by the Indian parliament after independence.

Land is the most important asset to the majority of Indians who live in rural areas. It is central to their lives as it can provide a family with physical, financial, and nutritional security.

Land is the most important asset to the majority of Indians who live in rural areas.

Moreover, land is a basis for status within the family and community and can be the foundation for political power.

b. Geography and Environment

India's total land area is 2,973,200 square kilometers, of which, agricultural land makes up 60.6% of the total land area and 32.7% of India's cropland is irrigated.¹⁰⁹ The country's population is estimated at 1.1 billion people, with 71% living in rural areas.¹¹⁰

c. Demographics and Social Data

Hindus account for 83% of the Indian population and Muslims 11%.¹¹¹ There are also other religions - Christians, Sikhs, Zoroastrians, Buddhists, Jains and Jews. The population growth rate is a little under 2% and the population density is 273 per sq. km.¹¹²

d. Economics

The composition of India's GDP in 2006 was 18% agriculture, 28% industry and 55% services.¹¹³ Approximately 70% of India's rural population is engaged in agriculture. Women provide more than half of all agricultural labor.¹¹⁴

e. Land and Natural Resources

¹⁰⁹ World Bank, 2008 World Development Indicators, at 41, 131, 135 (2008) World Bank, Washington D.C.

¹¹⁰ *Id.*

¹¹¹ Economist Intelligence Unit, *India Nepal: Country Profile*, (1997) The Economist Intelligence Unit, London.

¹¹² United Nations Economic and Social Commission for Asia, *Women in India: A country profile* (1997), United Nations, New York.

¹¹³ *Id.* at 203

¹¹⁴ Food and Agriculture Organization, *Fact Sheet India: Women in Agriculture, Environment, and Rural Production*, at 2 (2008) FAO Thailand (hereinafter "FAO")

Slightly less than 23% of India's territory is forested. India has over 200 million acres of community property land resources, of which more than 80 million hectares is forest land. Community waste land (degraded grazing land, barren land, roadside strips, etc) and forestland constitute the greatest proportion of community property land.¹¹⁵

f. Disadvantaged Groups

Among those considered disadvantaged in India are the tribal populations and the scheduled castes. Scheduled Castes and Scheduled Tribes are Indian population groupings that are explicitly recognized by the Constitution of India as disadvantaged. They are otherwise known as untouchables.

Tribal livelihoods are highly dependent on land for sustenance and their culture is closely linked to their ancestral lands.¹¹⁶ India's indigenous groups are referred to as *adivasis* or original inhabitants; they number 75-80 million, and comprise nearly 8% of India's population.¹¹⁷ *Adivasis* are an extremely diverse group of peoples, speaking over one hundred languages and divided into 635 communities with 414 main tribal affiliations. Ninety-four percent of *adivasis* are rural and 80% live as hunter-gatherers or engage in subsistence agriculture.

India was one of the first countries in the world to give women the right to vote.

g. Local Land Related Challenges

Approximately 17 million rural families in India are completely landless.¹¹⁸ While the net annual forest loss is reported to be zero, forest cover is declining in the northeastern states. Soil erosion is an ongoing problem in India due to cyclones, flooding, environmentally unfriendly agricultural practices, increasing consumption, industrialization and other factors. Protected areas make up 5.3% of India's land area.¹¹⁹

h. Women's Property Ownership, Activities and Employment

India was one of the first countries in the world to give women the right to vote, and it has a long history of female scholars and leaders.¹²⁰ Yet, there are very real differences between men and women in Indian society. For instance, men outnumber women in India; in 1991

¹¹⁵ Tim Hanstad, T. Haque, Robin Nielsen and Jennifer Brown, Meeting the Goals of Land Policy Reform in India: An Analysis of the Legal Framework Governing Rural Land Policy and Recommendations for the Road Ahead, 24-25 (2005) Rural Development Institute, Seattle, Washington.

¹¹⁶ Hanstad, *supra* note 114 at 19-20.

¹¹⁷ Dasgupta Modhurima, *Women, Adivasi Land Rights, and the Law in India*, at 1 (2006) Paper presented at the annual meeting of the American Sociological Association, Montreal Convention Center, Montreal, Quebec, Canada, Aug 11, 2006, available at http://www.allacademic.com/meta/p103946_index.html

¹¹⁸ Hanstad, *supra* note 114 at 13

¹¹⁹ World Bank, *supra* note 108 at 131,143.

¹²⁰ Kalyani Menon-Sen and A.K. Shiva Kumar, Women in India: How Free? How Equal? At 7 (2001) United Nations Office of the Resident Coordinator, India, 2001 available at http://www.un.org.in/IMAGES/kmsbk_1-22.pdf last visited December 9, 2009

there were 927 women for every 1000 men.¹²¹ The majority of women go through life under nutritional stress, and face nutritional discrimination within the family and only 50% of Indian women are literate as compared with 65.5% of men.¹²² There are fewer women in paid employment than men, and if they are employed they earn far lower than their male counterparts.¹²³

Women have the same right to own land as men in India, yet privately owned land is overwhelmingly held in the name of men. In India, 86% of rural women depend on agriculture for their livelihoods yet one survey revealed that less than 10% of privately held land nationwide was in the name of women.¹²⁴ The extensive land reforms adopted throughout India since Independence in 1947 have resulted in community land to which women traditionally had usufruct rights being formally titled in the name of men.¹²⁵ Also, women face opposition from male relatives or community members who are far more economically, socially and physically powerful than they are.

i. Land Policy and Reform

More than 14 million hectares of agricultural land have been converted to non-agricultural land since Independence.¹²⁶ The poor have been negatively affected by this conversion as the cumbersome, expensive and corruption-prone process of conversion has meant that poor landowners have not shared in the increase in value that generally accompanies conversion of private land.¹²⁷

The other major land reform adopted by all states imposes ceilings on the amount of land that can be owned by one person or family. The intent of the ceiling laws is to redistribute land above the ceiling amount to the poor. More than 5 million acres of land has been redistributed, 20% of which has been in the state of West Bengal. The ceiling amount ranges from 9 to 54 acres. In some states, beneficiaries receive the land free of charge; in others they must make payments that may equal the amount paid by the state. Generally, the beneficiary may not sell the land for a lengthy period of time (10-20 years in Karnataka, for example) or, as in West Bengal, are permanently prohibited from selling.¹²⁸ With the exception of the states of West Bengal, Jammu & Kashmir and Assam, the ceiling laws have not resulted in a significant redistribution of agricultural land in India as it has been relatively easy for owners to evade the laws.¹²⁹

Other land reform measures include the allocation of government-owned barren or mostly barren “wasteland” to the rural poor families, allocation of house sites and the distribution of *Bhoodan* (land gift) land.¹³⁰

¹²¹ *Id.*

¹²² *Id.* at 7-8.

¹²³ *Id.* at 8.

¹²⁴ Food and Agriculture Organization, *India Agricultural Census 1995/1996 and Livestock Census 1997* at 1 (2000) New Delhi: Ministry of Agriculture, Government of India, Available Online. URL: <http://www.fao.org/es/ess/census/wcares/2000indiaweb.pdf>

¹²⁵ FAO, *supra* note 113 at 2

¹²⁶ Hanstad, *supra* note 114 at 23

¹²⁷ *Id.*

¹²⁸ Hanstad, *supra* note 114 at 70, 81-84.

¹²⁹ *Id.*

¹³⁰ *Id.* at 102-104

II. Legal and Customary Land Rights for Women

a. Legal Overview

The Constitution of India¹³¹ provides that all citizens are entitled to equal treatment under the law and prohibits the government from discriminating against any person because of her sex.¹³² The *Constitution* expressly permits the government to make special provisions for women and children.¹³³

In India, land is controlled largely by state law, each state has its own land legislation. Different personal laws apply to different groups of people based on religion in India; these laws exist on a national and regional level, though the regional laws are largely unimplemented. Thus, Hindus are governed by the Hindu Marriage Act¹³⁴ and the Hindu

Succession Law¹³⁵. The Muslim Personal Law Application Act¹³⁶ and the Dissolution of Muslim Marriages Act¹³⁷ cover the Muslim community, while Christians are covered by the Indian Christian Marriage Act¹³⁸ and portions of the Indian Succession Act¹³⁹. The Parsi community is governed by the Parsi Marriage and Divorce Act¹⁴⁰ and portions of the Indian Succession Act. Finally, in addition to national statutes, the other principal source of personal laws is customary law, as practiced and sometimes applied in judicial decisions.



It is possible for members of any religious group to choose to avail themselves of the secular family law, though this is rare in practice.¹⁴¹

¹³¹ The Constitution of India 1949, (as modified, December 1, 2007)

¹³² *Id.* at Arts 14-15

¹³³ *Id.*

¹³⁴ Hindu Marriage Act, 1955, No. 25 of 1955 (as amended)

¹³⁵ Hindu Succession Act, 1956, No. 30 of 1956 (as amended)

¹³⁶ Muslim Personal Law (Shariat) Application Act of 1937, No. 26 of 1937 (as amended)

¹³⁷ Dissolution of Muslim Marriages Act, 1939, No. 8 of 1939 (as amended)

¹³⁸ Indian Christian Marriage Act, 1872, No. 15 of 1872 (as amended)

¹³⁹ Indian Succession Act, 1926, No. 39 of 1925 (as amended)

¹⁴⁰ Parsi Marriage and Divorce Act, 1936, No. 3 of 1936 (as amended)

¹⁴¹ Dinusha Panditaratne, *Towards Gender Equity in Developing Asia: Reforming Personal Laws within a Pluralist Framework*, at 1011 (2007) in *N.Y.U Review of Law and Social Change*, vol. 31: 1009-1054, 2007.

b. Marriage

The formal laws governing women's land rights during marriage depend on which state the family resides in and the family's religion.

Both the Hindu Marriage Act and the *Indian Christian Marriage Act* provide that the minimum age of marriage for men is 21 years and for women is 18 years. Under the Muslim Personal Law (Shariat) Application Act, 1937, the permissible age of marriage is at puberty.

Whether joint ownership of marital property is permissible, depends on the state law. As an example, in Andhra Pradesh, married women uniformly enjoy all the rights and privileges of ownership, however, the joint titling of land is prohibited in Andhra Pradesh under the Splitting Up of Joint Pattas Act.¹⁴² The only exception is for titling of family land held by Hindu families. As a result of the Act, land cannot be titled in the name of *both* the husband and wife but only in the name of *either* the husband or wife.

The Dowry Prohibition Act¹⁴³ prohibits both the taking and giving of dowry regardless of whether it is given on behalf of the bride or groom. However it does not apply to people in the states of Jammu or Kashmir, and does not apply to the payment of dower or *mahr* by the Islamic population.¹⁴⁴ Despite this prohibition of dowry, it is widely practiced.

Personal laws for Hindus and Christians prohibit polygamy¹⁴⁵ and it is criminalized by the penal code for non-Muslims¹⁴⁶, it is permissible for those who are covered by the Muslim Personal law.

c. Divorce, Separation and Abandonment

Divorce laws, like other personal laws in India, differ depending on the religion of the parties. For Hindus (including Sikhs, Jains and Buddhists) the Hindu Marriage Act, 1955 applies, for Muslims the

Dissolution of Muslim

Marriages Act, 1939,

Christians are governed by

the Indian Divorce Act,

1869, Parsis by The Parsi

Marriage and Divorce Act, 1936 and Inter-Cast or Inter-Religion divorces are governed by

Special Marriage Act, 1954.¹⁴⁷ Divorce rates, however, are quite low as there is a social stigma associated with it.

Divorce laws, like other personal laws in India, differ depending on the religion of the parties.

¹⁴² Andhra Pradesh Splitting up of Joint Pattas Act, 1965.

¹⁴³ The Dowry Prohibition Act, 1961, Act No. 28 of 1961.

¹⁴⁴ See *id.*, arts. 1, 2,

¹⁴⁵ Hindu Marriage Act, Art 1; Indian Christian Marriage Act, art 60.

¹⁴⁶ Indian Penal Code, No 45 of 1860 § 494 (as amended); see also Panditaratne, *supra* note 140 at 1013.

¹⁴⁷ Hindu Marriage Act, 1955, Act No. 25 of 1955; Dissolution of Muslim Marriages Act, 1939, Indian Divorce Act, 1869, Act No.VIII of 1939; The Parsi Marriage and Divorce Act, 1936; Special Marriage Act, 1954, Act No. 43 of 1954.

d. Inheritance and Division of Property

The law governing inheritance in India is varied and complex. As with marriage, the law governing inheritance varies based on the religion of the deceased.

Hindu personal law divides property into two classes: separate property, usually self- or ancestral land owned by coparceners, a traditional unit of property under Hindu *Mitakshara* law which confers rights of co-ownership on male family members upon their birth.¹⁴⁸ In the case of intestate succession of separate property, the Act provides for devolution in equal shares to the male and female children and widow of the deceased, and if the deceased is male, his mother.¹⁴⁹

In contrast, for ancestral property, when a coparcener dies, his share is divided among the others, increasing the size of each ancestral property.¹⁵⁰ With passage of the 2005 *Succession Amendment Act*, however, daughters are considered coparceners entitled to shares of ancestral land.¹⁵¹ A widow is not a coparcener.

Under the Muslim Personal Law widows and daughters of an intestate deceased have the right to inherit family land. However, widows and daughters receive half the share of property received by their male heir counterpart.¹⁵² The Act prohibits Muslim men and women from bequeathing by will more than one-third of his property, so he cannot completely disinherit his spouse and daughters. The Muslim personal law does not extend to agricultural land, leaving it to devolve by state law or, if state law is silent, custom.

Under the Indian Succession Act, no matter the origin of the land, when a Christian dies intestate, his widow receives one-third of the estate and his sons and daughters receive equal shares of the remainder.¹⁵³ If there are no children, but there are other more distant heirs, the widow receives half of the estate; otherwise, she inherits the entire estate.¹⁵⁴

III. Key NGOs Working on Women's Land Rights

IFAD's Women's Resource Access Program (WRAP)

The overall goal of WRAP is to raise international understanding of the need to improve women's access to land and other productive resources. WRAP draws directly on the views, experiences and knowledge of rural poor women in order to demonstrate the importance of land and other productive resources to their livelihoods and food security. It also ensures that the views of these women contribute directly to national and international decision-making and policy formulation on these issues.

¹⁴⁸ Panditaratne, *supra* note 140 at 1014

¹⁴⁹ Hindu Succession Act, arts. 8, 15

¹⁵⁰ *Id.*, art 6.

¹⁵¹ Hindu Succession (Amendment) Act 2005, No. 39 of 2005, art. 3.

¹⁵² Panditaratne, *supra* note 140 at 1014

¹⁵³ Indian Succession Act, art. 33

¹⁵⁴ *Id.*

WRAP objectives are to:

- Provide opportunities for the views and perceptions of rural poor women on the importance of resource-access to be heard at local, national and regional levels in order to contribute to, and influence, policy-making debates;
- Train and strengthen the capacity of civil-society organizations to listen, document and share rural poor women's views and perceptions on the importance of resource access in order to increase their ability to influence local, national and international decision-making processes;
- Develop a rapid low-cost methodology to facilitate up-take and up-scaling of the WRAP approach by international organizations and governments.

National Commission for Women, India

The National Commission for Women was set up as statutory body in January 1992 to review the Constitutional and Legal safeguards for women; recommend remedial legislative measures; facilitate redress of grievances and, advise the Government on all policy matters affecting women.

In keeping with its mandate, the Commission initiated various steps to improve the status of women and worked for their economic empowerment during the year under report. The Commission visits all the States except Lakshdweep and prepares Gender Profiles to assess the status of women and their empowerment. It also undertakes impact litigation

Rural Development Institute (RDI)

RDI is securing women's land rights through "micro-ownership" of land titled in women's names, and holds state level policy workshops on woman's land rights.

Samarasa (C.S. Vedamani)

Based in Bidar, Karnataka Samrasa has undertaken a pilot housing project with an Self Help Group bank linkage component.

In Bidar District, a local NGO, Samarasa, has organized women into self-help groups for the housing project. Samarasa staff provided capacity building to the women and their households on the purpose of the titling directive and requirements of the housing project. Women and men who received this capacity building are well versed in the privileges and responsibilities of ownership of a house plot and house. The women actively contemplate how their housing rights may enlarge their possible livelihood options, including using their plots for income-generation activities and joining with neighboring women to lobby local officials regarding the use of the village's common land. The women not only recognize that holding title to the house improves their personal and financial security, they understand that the plot and house are assets that provide them with opportunities to benefit their households.

Working Group on Women and Land Ownership (WGWLO)

A network of 23 non-governmental organizations (NGOs) based in Gujarat, India. The goal of WGWLO is to bring visibility to the issue of women and agricultural land ownership, and to advocate changing aspects in laws and policies of the Government of Gujarat which

inhibit women from owning land in their name. Strategies used include organizing workshops at the grassroots level to raise awareness of the issues, conducting research, reaching out to the media, carrying out capacity building and advocacy at the national level - for example advocating for incentives to be incorporated into government schemes so that men are motivated to transfer land in the name of women from their household - and trying to integrate the issue of women's land ownership within ongoing NGO programs.

Nepal

I. Background

a. Legal and Political Overview

An isolated, agrarian society until the mid-20th century, Nepal entered the modern era in 1951 without schools, hospitals, roads, telecommunications, electric power, industry, or a civil service. The country has, however, made progress toward sustainable economic growth since the 1950s and is committed to a program of economic liberalization.

Nepal is a country at cross-roads, an “open moment” in its history. Nepal’s decade-long conflict between the Maoists and the constitutional monarchy formally ended in November 2006. The last vestiges of the centuries-old monarchy were officially decommissioned with the adoption of the Interim Constitution in 2007. In 2008, the country voted in a Constituent Assembly, named a President, elected a Prime Minister, formed a coalition

Nepal is a country at cross-roads, an “open moment” in its history.

government, and set about the task of writing a new Constitution by 2010, with a new round of elections planned for 2011. The new Nepal that is to emerge is expected to take on a federal character, vastly altering

administrative and decision-making powers. The next few years are critical as Nepal faces transition to the new State and confronts long-standing development challenges at a time of global economic downturn. The key challenge facing the new government, at this juncture, will be to rebuild the legitimacy of the state, maintain law and order, and deliver benefits to those excluded and to society at large.¹⁵⁵

b. Geography and Environment

Located in Southern Asia, between China and India, Nepal is a landlocked country of 147,181 square kilometers, an area slightly larger than the U.S. state of Arkansas.¹⁵⁶ Nepal has three distinct geographical areas: the Terai plateau extending northward from the country’s southern border with India; the central foothills; and the Himalaya Mountains to the north, bordering China. Only 16-20% of Nepal’s land is cultivable, and half of this land is in the Terai. The Terai covers 17% of Nepal’s land mass and supports the overwhelming majority of the country’s agricultural production.¹⁵⁷ According to the Nepalese Central Bureau of Statistics website, the mountain, hill and Terai regions accommodate approximately 7%, 44% and 49% of the population, respectively.¹⁵⁸

¹⁵⁵ World Bank, *Nepal Country Overview* (2009) available at <http://www.worldbank.org.np/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/NEPALEXTN/0,,contentMDK:22147453~pagePK:141137~piPK:141127~theSitePK:223555,00.html> last visited December 8, 2009

¹⁵⁶ Nepal Central Bureau of Statistics, *Agricultural Monograph 2001/02*, available at http://www.cbs.gov.np/agriculture_monograph.php last visited December 8, 2009

¹⁵⁷ Robin Nielsen, *Managing Nepal's Forests for Equitable and Sustainable Access and Use: A Land Tenure Perspective*, at 18 (2008) Rural Development Institute.

¹⁵⁸ *Id.*

c. Demographics and Social Data

Nearly 29 million people of more than 100 caste or ethnic groups live in Nepal. In 2008, approximately 17% of the total population lived in urban centers, and there is a trend of increasing movement of the population from rural to urban areas, with a projected annual rate of urban population increase of 4.9% between 2005 and 2010.¹⁵⁹

Nepal's census counts 100 ethnic and caste groups that are classified into five larger groups on the basis of shared and prominent cultural traits: Hindus (59% of the population), indigenous Janajatis (31%), Newars (5.5%), Muslims (4.3%), and others, a category that includes Sikhs, Bengalis, Marwaris, and Jains (0.2%). According to the 2001 census, 80.6% of Nepalese are Hindu, 10.7% are Buddhist, 4.2% are Muslim, 3.6% are Kirat (an indigenous religion), 0.5% are Christian, and 0.4% are classified as other groups.¹⁶⁰



¹⁵⁹ Central Intelligence Agency, *The World Factbook - Nepal*, available at <https://www.cia.gov/library/publications/the-world-factbook/print/np.html>.

¹⁶⁰ Library of Congress, *Country Profile: Nepal* (2005) Library of Congress Federal Research Division, available at <http://lcweb2.loc.gov/frd/cs/profiles/Nepal.pdf>.

d. Economics

Nepal ranks among the world's poorest countries, with a per capita income of around \$470 in 2009.¹⁶¹ Based on national calorie/GNP criteria, an estimated 31% of the population is below the poverty line.¹⁶² In terms of human and social development, Nepal ranks 136 out of 177 countries in the Human Development Index.¹⁶³ Nepal has a population of 27.6 million people 84% of which are rural. There is a wide disparity in infrastructure and markets between the urban and rural areas. The GDP of US\$8.9 billion is mostly derived from the service industry, at 49%.¹⁶⁴ Agriculture makes up 34% of the GDP, while industry makes up 16%.¹⁶⁵

Agriculture is the main source of livelihood for most Nepalese. Nearly four fifths of all Nepalese households are farm households, who derive nearly half of their income from agricultural sources consisting of farm income and agricultural wage income. Agriculture engages two-thirds of the labor force.¹⁶⁶ Poverty is highest among agricultural wage earners, small agricultural households, Dalits, Janjaits, Muslem and illiterate households.¹⁶⁷ In Nepal, food insecurity is a major challenge. Rural areas have particularly high levels of poverty with 44% of the rural population living below the poverty line and 56% of rural children under-five-year-olds considered to be chronically malnourished.¹⁶⁸

e. Land and Natural Resources

Population growth has led to fragmented land holdings and depletion of forest products upon which much of the rural population depends for its livelihood. Nepal 's population is growing at 2% per year, and the ratio of population to arable land is one of the highest in the world.¹⁶⁹

Agricultural land makes up 30% of Nepal's land mass, and nationally protected areas make up 19%.¹⁷⁰ Nepal has relatively broad irrigation coverage, with 47% of all cropland being irrigated and forest coverage is at around 25% of the land mass but suffers an annual deforestation rate of 1.4%.¹⁷¹ Nepal's mountainous terrain constrains land use options. Only an estimated 25% of Nepal's total land area is cultivable, another 33% is forested and the remainder is mountainous; approximately 18% of the total land area was used for agriculture in 2002.¹⁷²

¹⁶¹ U.S. Department of State, *Background Note: Nepal*, available at <http://www.state.gov/r/pa/ei/bgn/5283.htm>.

¹⁶² *Id.*

¹⁶³ UNICEF, *Situation of Women and Children in Nepal* (2006), available at http://www.unicef.org/sitan/files/Nepal_SitAn_2006.pdf.

¹⁶⁴ World Bank. World Development Indicators, at 41, 131, 203 (2008) Washington D.C.: The World Bank; Madhab Karkee, *Nepal Economic Growth Assessment, Agriculture*, at vi (2008) submitted to USAID, available at http://pdf.usaid.gov/pdf_docs/PNADN016.pdf, last visited December 14, 2009.

¹⁶⁵ *Id.*

¹⁶⁶ Karkee, *supra*. Note 163 at 1-5

¹⁶⁷ Karkee, *supra*. note 163 at 1-5

¹⁶⁸ Government of Nepal, Ministry of Agriculture and Cooperatives, at <http://www.moac.gov.np/home/index.php>.

¹⁶⁹ *Id.*

¹⁷⁰ World Bank, *supra* note 163 at 131

¹⁷¹ World Bank, *supra* note 163 at 131, 135, 143

¹⁷² Library of Congress, *supra* note 159

Nepal's agriculture suffers from persistently low yield; it relies on water intensive crops when irrigation is inconsistent, and on imported chemical fertilizer the supply of which is uncertain and costly.¹⁷³ Much of the land in Nepal's hills is degraded and forests have been felled at a rapid pace in recent decades.¹⁷⁴

f. Disadvantaged Groups

Although discrimination on the basis of caste is illegal according to the Country Code of 1963, it is still common across Nepal, particularly in the more orthodox communities.¹⁷⁵ Nepalese society is rigidly hierarchical; pervasive social inequality based on caste, ethnicity, and gender is deeply rooted in culture, religion, and centuries of feudal rule. Social inequality is comprehensive, including disparity of access to livelihood resources, government services, and economic opportunity.¹⁷⁶ Women, Madhesis, Janajatis, and others are regarded as discriminated groups.¹⁷⁷

g. Local Land Related Challenges

Nepal's pattern of agricultural land distribution has become more concentrated over time. At current estimates, 5% of the population control around 27% of the land and own three or more hectares.¹⁷⁸ Forty-four percent of households own half a hectare or less and occupy 14% of cultivatable area; this figure includes the 22 to 31% of the rural population that are either completely landless or own less than 0.2 hectares of land.¹⁷⁹

Nepal's pattern of agricultural land distribution has become more concentrated over time.

Smallholder farms dominate, with the average holding size 0.8 hectares.¹⁸⁰ About 2% of total farm holdings are worked by landless tenant farmers while the many farmers operate under mixed tenure arrangements and rent in land in addition to land they own.¹⁸¹ In terms of area, land under some form of tenancy officially constitutes around 10% of all farmland in Nepal; though, the actual incidence of tenancy is likely higher due to the presence of

¹⁷³ Karkee, *supra* note 163 at vi.

¹⁷⁴ *Id.*

¹⁷⁵ UNICEF *supra* note 162.

¹⁷⁶ Associates in Rural Development, *Conflict Over Natural Resources at the Community Level in Nepal*, at v. (2006), submitted to USAID, available at http://pdf.usaid.gov/pdf_docs/PNADF990.pdf, last visited December 14, 2009.

¹⁷⁷ World Bank, *Nepal: Women Gain a Voice and Greater Access to Resources through the Hills Leasehold Project*, in *Gender in Agriculture Sourcebook*, Innovative Activity Profile I, (2009 World Bank, Washington D.C.) available at <http://siteresources.worldbank.org/INTGENAGRLIVSOUBOOK/Resources/CompleteBook.pdf> last visited December 8, 2009.

¹⁷⁸ Nielsen, *supra* note 156 at 22-23

¹⁷⁹ *Id.*

¹⁸⁰ Karkee, *supra* note 163 at 1

¹⁸¹ *Id.*

informal unregistered tenants. The land tenure picture is further complicated by the presence of illegal cultivators from India.¹⁸²

h. Women's Property Ownership, Activities and Employment

Women constitute 51% of the Nepali population and represent 66% of the agricultural labor, yet only own an estimated 8% of the land.¹⁸³

The family and kin group are of great importance to Nepalese. Sociologically, the family gives the individual a caste, an identity, a religion, and a home.¹⁸⁴ Economically, the extended family provides all that an individual needs for survival, by access to resources and the pooling of labor.¹⁸⁵ There is a gendered division of labor, with women, especially married women, doing the bulk of the work for the extended family, in addition to their own domestic chores.¹⁸⁶

i. Land Policy and Reform

Land rights can be acquired by inheritance, purchase, or tenancy in Nepal.¹⁸⁷ The Land Act of 1964 imposed ceilings on household land holdings. Under that law, land held above the ceiling was to be redistributed to the landless and small holders. The Act also set ceilings for tenant holdings that were significantly lower than those for landowners. The Act granted tenants heritable occupancy rights, limited rents to 50% of gross annual produce, instituted a compulsory savings scheme for tenants, and limited the grounds for eviction. The Act did not grant tenants ownership rights.¹⁸⁸

In 1997, the Land Act was amended and tenants were to be given 50% of land he/she had hitherto cultivated to create the opportunity for tenants to eventually become land-owners. This amendment has been largely unimplemented in practice partially because of a lack of political will. Also, even if implemented, it would have had minimal impact on the many informal (unregistered) tenants in Nepal.¹⁸⁹ In 2001 the Land Act was amended again to lower ceilings, introduce incentives to cooperative farming, and control land fragmentation; however this amendment too, has been largely unimplemented. The Land Act's objective to redistribute land among the landless and small holder peasants had only a small impact on land distribution in the country and only redistributed 1.5% of land.¹⁹⁰

¹⁸² *Id.*

¹⁸³ World Bank, *supra* note 176.

¹⁸⁴ Kate Gilbert, *Women and Family Law in Modern Nepal: Statutory Rights and Social Implications*, at 739 N.Y.U. Journal of Int'l Law and Politics, vol. 24: 729-758 (1992)

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 740.

¹⁸⁷ Nielsen *supra* note 156 at 22.

¹⁸⁸ *Id.*, at 25.

¹⁸⁹ Devendra P. Chapagain, *Status Review and Dialogue: Land and Agriculture*, at 34 Nepal: National Strategy for Sustainable Development, (2001 World Conservation Union), available at <http://www.nssd.net/pdf/nep02.pdf>, last visited May 2009.

¹⁹⁰ Nielsen *supra* note 156 at 24-25

II. Legal and Customary Land Rights for Women

a. Legal Overview

The status of the Nepali Constitution is uncertain. Currently the country operates under the Interim Constitution, adopted on January 15, 2007,¹⁹¹ which expressed, *inter alia*, full commitment to democratic ideals and norms, civil liberties, fundamental human rights, and the rule of law.¹⁹² It also recognizes equality before the law and no discrimination based on class, caste, sex, tribe, origin, language or religion.¹⁹³

The legal code, or Muluki Ain, was introduced in 1854 and revised in 1963 (the “Naya Muluki Ain” or “New Civil Code”). The Muluki Ain¹⁹⁴, derived from Hindu caste law and custom, has served as a general code of civil and criminal law and procedure, applicable to all Nepalese regardless of religion or ethnicity. It covers property, inheritance, adoption, marriage, divorce, homicide, rape, incest, and many other subjects.¹⁹⁵ The Muluki Ain in its current form, combines Hindu laws and sanctions, British and Indian codes, and traditional rules of behavior among the Newars in the Kathmandu Valley. Issues not covered by the code are generally dealt with according to customs of local communities.¹⁹⁶

One review of Nepalese law in 2003 identified 137 provisions, two rules in their entirety, and 121 schedules in 85 laws that were discriminatory.¹⁹⁷ The government has constituted a high-level commission to review all existing discriminatory laws, and its work is ongoing. In 2006, Nepal had about 150 special measures for women spread across 56 laws. However, a number of these ‘special measures’ were mixed blessings, often resulting in less freedom and reduced rights for women.¹⁹⁸

The status of the Nepali Constitution is uncertain. Currently the country operates under the Interim Constitution ...

In 2002 the Eleventh Amendment to the Muluki Ain was enacted and contained a number of positive provisions for women’s property rights, yet women’s and men’s property rights are still not equitable.

b. Marriage

In the Muluki Ain, in case of bigamy, the first wife, son and daughter must share their property with the second wife and her children. Arranged marriages are the norm in the mainstream culture of Nepal. Because marriages forge important social bonds between families, when a child reaches marriageable age, the family elders are responsible for finding

¹⁹¹ Interim Constitution of Nepal, 2063 (2007), art. 13.

¹⁹² *Id.*, see Preamble.

¹⁹³ *Id.*, at art 13.

¹⁹⁴ Note: The Muluki Ain is not widely available in English.

¹⁹⁵ Library of Congress *supra* note 159

¹⁹⁶ *Id.*

¹⁹⁷ UNICEF *supra* note 162

¹⁹⁸ *Id.*

a suitable mate of the appropriate caste, education level, and social stratum.¹⁹⁹ Also, fraternal polyandry, where two or more brothers marry the same woman, is not an uncommon practice.²⁰⁰

Daijo, or dowry, consists of property usually moveable property, given to a woman at the time of marriage by relatives from her parents' side (*maiti*), her mother's parents' side (*mamulipatti*), or by neighbors and friends (*istamitraberi*). It usually consists of items that the bride can take to her new home. Things that are part of the daijo, and which can be proved to be part of the daijo, are not included in the ancestral property of the husband, and thus need not be shared among the husband and his brothers at the time that ancestral property is divided. However, neither is *daijo* a separate form of "female property." It is considered part of the joint conjugal property of the husband and wife, and it is ordinarily inherited by a woman's sons after her death.²⁰¹

c. Divorce, Separation and Abandonment

Under the Muluki Ain, only men may divorce if his wife is childless.²⁰² However, divorce itself is discouraged, and the local government is authorized and instructed to attempt to reconcile the parties should a divorce action commence. Unilateral divorce is permitted only under certain circumstances."²⁰³

d. Inheritance and Division of Property

Under the Muluki Ain (Eleventh Amendment) widows have the right to inherit her husband's property. Daughters may inherit equally with sons, however, if she is married after inheriting, she must return her share to the other heirs.²⁰⁴ Also, the Muluki Ain discriminates among daughters on the basis of marital status or between married and unmarried daughters in partition, intestate property and in transaction of property.

While the code does grant women some important property rights, it also contains biases against women's property rights by emphasizing the rights of the kin group (husband's lineage, including ancestors) to land over that of women who are considered peripheral and dependant on the kin group.²⁰⁵

Under custom, the family unit is most important to Nepalese. While the family shares the same hearth, the senior members (mother and father) and the permanent junior members (sons) make all decisions about production, consumption and labor. These joint extended families usually co-reside for two generations and are broken up at the time of the marriage

¹⁹⁹ David O'Neil, *Sex and Marriage Rules: Part I*, (2009) Palomar College, available at http://anthro.palomar.edu/marriage/marriage_3.htm, last visited December 8, 2009

²⁰⁰ *Id.*

²⁰¹ Gilbert, *supra* note 183 at 745.

²⁰² Forum for Women, Law and Development, *Women Living Under Muslim Law, Nepal: Country Code (eleventh amendment) bill and women's rights* (2002), available at <http://www.wluml.org/node/732> (hereinafter "FWLD")

²⁰³ Gilbert, *supra* note 183 at 751-52

²⁰⁴ *FWLD supra* note 201.

²⁰⁵ Gilbert, *supra* note 183 at 740.

of the youngest son or after the senior male has died. After that point the heirs come together and divide their assets and their liabilities into even shares. Generally heirs to ancestral property are male.²⁰⁶

III. Key NGOs Working on Women's Land Rights

Community Self Reliance Center (CSRC), Jagat Basnet, Director

<http://www.csrcnepal.org/index.htm>

CSRC advocates for women's property rights as equal as to the men. It reviews property rights laws and state policies in collaboration with other human rights organizations and launches advocacy campaigns to create pressure on the state. CSRC has further engaged with political actors and government officials in the form of consultations, dialogues, debates and policy formulation processes in advocating for women's property rights especially land rights. CSRC carries out similar process at the community to educate ordinary people on the subject matter, build public opinion and create pressure to the policy makers from the ground. Since its creation, the CSRC has helped 15,000 farmers acquire land.

CSRC has had lasting impact on policy and political discussion on land rights as a 'development issue' as well as on 'poverty' discourse. It intends to direct more focus specifically on women's land rights, by

- Conducting gender-sensitive land tenure context mapping at community, district and national levels
- Campaigning for joint land entitlement between men and women
- Advocating for sole land ownership to women in case she is a single woman
- Advocating for collective rights for managing lands by group of women at community level. However, there is a need for critical scrutiny in the cases of so-called 'fallow' land, as the collective in the authority.
- Promoting women's stake in managing communal and other public lands, management committee not less than 50%
- Campaigning for women's land right as an integral component of human rights to be recognized by the government, international community and other concerned.
- Advocating the set up special mechanism and procedures for ensuring women's land rights
- Linking Nepal's women's land rights movement to other countries in the region and beyond, and share good practices and learning.

Rural Women Development Centre (RWDC), Nepal

Rural Women Development Centre (RWDC) has been championing the prime cause of land rights for the landless people (ex-Kamaiyas, tenants) in Dang since 2004. This land rights movement initiated from Dang has evolved into a national movement at the central level that has highlighted the land rights issues before the major political parties.

²⁰⁶ See Gilbert, *supra* note 183, at 739-741.

All Nepalese Women's Association (ANWA)

ANWA is strongly committed and dedicated to create awareness and to organize women to fight inequality, injustice, all forms of feudal, capitalist and imperial exploitation, superstitious beliefs and social evils. It has played a very important role in the restoration of democracy in the country in 1950 and 1990 respectively. Since the beginning, it has launched an awareness building campaign on literacy, women's education, and has raised voices against polygamy, child marriage, and equal rights in all sectors of society.

Forum for Women, Law and Development (FWLD) <http://www.fwld.org.np/fwld@andolan.wlink.com.np>

The Forum for Women, Law and Development is a non-governmental organization whose mission is to eliminate all forms of discrimination against women in Nepal and protect and promote human rights through research and public education, advocacy, legal aid and litigation. Its activities include:

- Advocacy on human rights of women and children
- Making state accountable to fulfill its commitments under the human rights instruments and declarations
- Conduct research activities on socio-legal issues of contemporary importance
- Provide legal aid and counseling services to needy group
- Conduct training for capacity building and to impart knowledge
- Public Interest Litigation to maintain the rule of law
- Dissemination of information on human rights and legal rights issues
- Build up national, regional and international network on issues of women
- Lobby to reform the discriminatory laws and policies
- Use laws which are in favor of women's rights as an instrument to change social value systems that are discriminating against women

Pakistan

I. Background

a. Legal and Political Overview

Pakistan, a country just less than twice the size of California, is located in south central Asia and is bordered by Iran, Afghanistan, China and India.²⁰⁷ It is divided into four provinces: Balochistan, North-West Frontier Province, Punjab, and Sindh; and two territories: Islamabad Capital Territory and the Federally Administered Tribal Areas.²⁰⁸ Pakistan also has two administrative entities (Azad Kashmir and Northern Areas) in the Jammu and Kashmir region which have been the subject of a long and bitter dispute with neighboring India.

In Pakistan the livelihoods of rural people revolve around arable land ...

In Pakistan the livelihoods of rural people revolve around arable land; it is a basic resource which provides food, shelter, and place to grow and tend to livestock. It is also a determinant of social status and non-ownership of land is considered a key factor in poverty.²⁰⁹

b. Geography and Environment

Pakistan has a total land area of 770,100 square kilometers, its landscape ranges from the Himalayan and Hindu Kush mountains (including the world's second highest peak, K2), intermountain valleys, high plateaus, irrigated plains, and desert. Only about a quarter of the land is arable (used for crops replanted after each harvest), less than 1% is used for continuous crops (crops that are not replanted after each harvest), and the remaining three quarters is dedicated to other uses (i.e. meadows, pastures, buildings, roads, etc.).²¹⁰ Thirty-five percent of Pakistan's total land area is agricultural land, most of which is located in the Indus River Plain and two and one-half percent of the country's total land is forest.²¹¹ Nationally protected areas cover 8.5% of total land area and the annual rate of deforestation is 2.1%.²¹² The total area does not include the disputed territories of Azad Kashmir and the Northern Areas (11,639 square kilometers and 72,520 square kilometers, respectively), which are claimed by both Pakistan and India.²¹³

²⁰⁷ Central Intelligence Agency, *The World Factbook*, November 2009, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html> last visited December 14, 2009

²⁰⁸ *Id.*

²⁰⁹ Khawar Mumtaz and Meher M. Noshirwani, Scoping Study: Women's Access and Rights to Land and Property in Pakistan, International Development Research Center, available at http://www.shirkatgah.org/Women_access-rights-to_land_property_in_Pakistan.pdf, last visited December 14, 2009.

²¹⁰ CIA World Fact Book, *supra* note 205

²¹¹ *Id.*

²¹² See World Bank, 2009 World Development Indicators, (2009 Washington D.C.: The World Bank)

²¹³ *Id.*

c. Demographics and Social Data

The 2007 population was 162 million people, 64% of whom live in rural areas, ninety-seven percent of Pakistan's population is Muslim.²¹⁴ Approximately 64% of the country's estimated 170 million citizens live in rural areas.²¹⁵ Aside from land, Pakistan's natural resources include coal, natural gas, petroleum, iron ore, copper, salt, and limestone.²¹⁶

d. Economics

Seventy-three percent of the population lives on less than \$2 a day, 17% on less than \$1 a day. Total GDP in 2007 was \$143 billion, with 53% attributed to services, 27% to industry, and 21% to agriculture. Livestock accounts for half of agricultural GDP.²¹⁷

Pakistan's economy has improved since the '90s, a decade plagued with instability resulting from an increase in poverty, the devaluation of Pakistani currency, and increase in foreign and domestic debt.²¹⁸ Since then, due to drastic measures taken to arrest the economic decline, and agreement with the US to oppose the Taliban, the growth rate has increased, foreign reserves have crossed the \$12 billion mark, and the number of Pakistanis living in poverty has reduced.²¹⁹ However, the estimated number living under the poverty line currently is somewhere around 28%.²²⁰

e. Disadvantaged Groups

Pakistan is a class and caste based society. The most disadvantaged groups are the poor landless and sharecroppers, as well as some of the occupational groups – like cobblers and potters – who are lower end of the social ladder.²²¹ Other marginal groups are the gypsies who move around in construction sites begging and the brick kiln and mine works. The majority of these people live in bondage against loans taken from their employers.²²²

Pakistan is divided into four Provinces: Punjab, Sindh, North West Frontier Territory (NWFT), and Balochistan. Pakistan's Tribal Areas stretch along the eastern border of Afghanistan and are administratively divided into the Provincially Administered Tribal Areas (PATA) and the Federally Administered Tribal Area (FATA). The inhabitants of the Tribal Areas are ethnically and linguistically distinct from the rest of the country, with most belonging to the Pukhtun-Afghan race. The Tribal Areas contain Pakistan's poorest and most remote populations, with most dependent on livestock rearing and subsistence farming for their livelihoods.²²³ Ninety-seven percent of the women in FATA are illiterate.²²⁴

²¹⁴ World Bank, *supra* note 211.

²¹⁵ United Nations Population Fund, *State of World Population 2007: Unleashing the Potential of Urban Growth*, 91 (2007), available at http://www.unfpa.org/swp/2007/presskit/pdf/sowp2007_eng.pdf

²¹⁶ Central Intelligence Agency, *supra* note 205.

²¹⁷ World Bank, *supra* note 211.

²¹⁸ Convention on the Elimination of all Forms of Discrimination Against Women, *Pakistan*, available at <http://daccessdds.un.org/doc/UNDOC/GEN/N05/454/37/PDF/N0545437.pdf?OpenElement> last visited Aug 2008.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ Mumtaz, *supra* note 208 at 2.

²²² *Id.*

²²³ Department for International Development, *Country Plan: Pakistan 2009-2013*. (2008 London: DFID), available at <http://www.dfid.gov.uk/Documents/publications/pakistan-CAP-08.pdf>, last visited May 15, 2009;

²²⁴ *Id.*

f. Local Land Related Challenges

Pakistan's land suffers from heavy soil erosion and steady degradation. Deforestation, livestock grazing, and improper land cultivation techniques have caused reservoirs to silt up, reducing the capacity to generate power and the availability of water for irrigation. Countrywide, livestock populations exceed the carrying capacity of the rangeland, destroy natural vegetation, overwhelm water sources, and cause soil erosion. Much of the country's irrigated land suffers from various levels of salinity, and the coastal strips and mangrove areas are stressed by reduced fresh water flow, sewage, and industrial pollution.²²⁵



Uneven land distribution has been a major cause of income inequality in rural Pakistan since well before Independence and stretching to present day. In 2000, only 37% of rural households owned agricultural land; 63% were landless.²²⁶ Rural poverty is highest among landless households (55%), followed by non-agricultural households (39%).²²⁷ The incidence of poverty declines with increases in landholdings and vanishes in households with land holdings of 1-2 hectares and above.²²⁸

g. Women's Property Ownership, Activities and Employment

The status of women across Pakistan is not uniform as there are socio-cultural, regional, tribal, and other factors which come into play. There is considerable diversity in the status of women across classes, regions, and the rural/urban divide due to uneven socioeconomic development and the impact of tribal, feudal, and capitalist social formations on women's lives. However, women's situation vis-à-vis men is one of systemic subordination, determined by the forces of patriarchy across classes, regions, and the rural/urban divide.²²⁹ However, as in other orthodox Muslim societies, most Pakistani women are charged with the responsibility of maintaining the honor of their families.²³⁰ This responsibility manifests itself through limitations upon a woman's freedom of mobility, association, dress; these

²²⁵ See World Bank, *Pakistan: Strategic Country Environmental Assessment*, (2006), Report No. 36946-PK. Washington D.C.: World Bank.

²²⁶ **Talat** Anwar, Sarfraz Qureshi, and Hammad Ali, *Landlessness and Rural Poverty in Pakistan*, at 890-891, *Pakistan Development Review* 43(4), 855-874 (2005)

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ Asian Development Bank, *Country Briefing Papers: Women in Pakistan*, at 1 (2002), available at http://www.adb.org/Documents/Books/Country_Briefing_Papers/Women_in_Pakistan/women_pakistan.pdf last visited December 13, 2009

²³⁰ Islam for Today, *The Situation of Women in Pakistan*, available at <http://www.islamfortoday.com/pakistanwomen.htm> last visited Aug 2008.

constraints are known as *Purdah*, (Persian for curtain), which is practiced to different extents in different regions of the country.²³¹ Women in more rural communities in Punjab and Sindh are allowed greater freedom as they have many agricultural responsibilities.²³²

Women have a secondary status in Pakistan. Pakistan women's labor force participation is low at just under 16% and they also suffer a poor literacy rate as compared with men, 40% and 65% respectively.²³³ Women have little access to or control over productive resources.

In the household, Pakistani women are generally expected to cook, clean, and care for the young and the elderly while the men are expected to earn a livelihood and support their families financially.²³⁴ This division in labor, however, which was once clear-cut, is slowly changing as women are given more opportunities to become involved in their communities, and to seek education or outside employment.²³⁵ Women are even beginning to comprise a significant part of Pakistan's uniformed services with representatives in the police force, airport security force, and army medical corps.²³⁶

h. Land Policy and Reform

Pakistan has engaged in three land reform efforts under three different governments. The Land Reform Act of 1977, Pakistan's third effort at addressing inequality of land access and insecurity of land tenure since Independence, attempted to plug gaps in prior land reform legislation and implement tenancy, land ceilings (limits of size of holdings), and land distribution reforms. The passage of the Act was followed by the imposition of martial law and much of the momentum fueling reforms dissipated. In the years that followed, the courts ruled various provisions of the Act un-Islamic and political will to address land issues waned. A resurgence of interest in land reform and attendant revisions to the Act (mostly to pave the way for expansion of commercial farming interests) took place in the 1980s. To date, however, in most of Pakistan issues of land distribution and insecure tenure remain unaddressed.²³⁷

II. Legal and Customary Land Rights for Women

a. Legal Overview

The structure of Pakistan's legislation is fluid and in a near constant state of amendment as it continues to conform and adjust to Islamic jurisprudence, which is itself evolving. Statutory law specific to land rights in Pakistan is dated, fragmented, and incomplete. More than two

²³¹ *Id.*

²³² *Id.*

²³³ Mumtaz *supra* note 208 at 2.

²³⁴ Convention on the Elimination of all Forms of Discrimination Against Women, *Pakistan*, available at <http://daccessdds.un.org/doc/UNDOC/GEN/N05/454/37/PDF/N0545437.pdf?OpenElement> last visited Aug 2008.

²³⁵ *Id.*, at 30

²³⁶ *Id.*, at 30.

²³⁷ Mahmood Hasan Khan, *Underdevelopment and Agrarian Structure in Pakistan* (1981 Boulder: Westview Press)

dozen laws govern a variety of land matters at national and provincial levels. The tribal population of FATA is subject to a separate legal framework.²³⁸

Article 23 of the Constitution of Pakistan states that, “every citizen shall have the right to acquire, hold, and dispose of property in any part of Pakistan.”²³⁹ It also guarantees equal rights to property and calls for bringing all laws in conformity with the Holy Quran and *Sunnah* and to strike down any custom having the force of law as far as it is inconsistent with fundamental rights.²⁴⁰ Women’s property rights derive from Muslim personal law, and tribal and regional custom.

b. Marriage

Under the Muslim Family Law, women have unequal rights to inheritance, termination of marriage, minimum age of marriage, and natural guardianship of children; polygamy has not been banned or even sufficiently restricted by law; and there are grossly inadequate provisions for women’s financial security after termination of marriage.²⁴¹ Muslim law recognizes the payment of dower in marriage, however, by application of custom dower is generally deferred (not paid at the time of entering into the marriage contract) and later waived by the wife.²⁴²

Pakistani law does not recognize the rights of women to property which may have been acquired during the marriage. Currently the law does not have the concept of co-ownership of marital property.²⁴³

About 23 percent of females between the ages of 15 and 19 are married, compared with 5 percent of the male population in the same age group. A majority of women are married to their close relatives, i.e., first and second cousins and only 37 percent of married women are not related to their spouses before marriage.²⁴⁴

c. Divorce, Separation and Abandonment

The divorce rate in Pakistan is extremely low due to the social stigma attached to it.²⁴⁵ While Islamic law provides for maintenance a woman cannot claim a share in her husband’s property and she is not entitled to maintenance in the long term.²⁴⁶ Her claim to dower also has to be forfeited if she has asked for the divorce. In the agricultural context a divorced woman would lose her right to work on the household land or access any common land which perhaps was being used by her husband’s family as tenant farmers or share croppers.²⁴⁷

²³⁸ Thomas H. Reynolds and Arturo A Flores, *Foreign Law Guide: Pakistan*, available at (subscription required <http://www.foreignlawguide.com/>), last visited December 2009

²³⁹ Constitution of Pakistan (1973), art 23.

²⁴⁰ *Id* at art 25.

²⁴¹ *Id.*

²⁴² Sustainable Policy Development Institute, *Land Rights for Women: Review of Law and Policy*, Draft version, at 10 (2008) (hereinafter “SDPI”)

²⁴³ *Id* at 8-9

²⁴⁴ Asian Development Bank, *supra* note 228 at 1.

²⁴⁵ *Id.*

²⁴⁶ SDPI *supra* note 241 8-9

²⁴⁷ *Id.* at 9

d. Inheritance and Division of Property

Inheritance in Pakistan is governed by Islamic *Shariah* as codified in the Family Laws Ordinance 1961, and the West Pakistan Muslim Personal Law (Shariat) Application Act (V of 1962) which consolidated and amended the various Muslim laws. Pursuant to the West Pakistan Muslim

Personal Law

(Shariat

Application) Act

1962 the issue of inheritance is to be

dealt with under the personal law of each citizen residing within the State. Moreover, the Courts have decided that every Muslim is presumed to be Hanafi unless proved otherwise.²⁴⁸

The general rule for inheritance is that women inherit half as much as the men in the same class of heirs ...

The general rule for inheritance is that women inherit half as much as the men in the same class of heirs, though the proportion of shares varies not only according to the relationship to the deceased but also by sect, i.e. *Sunni* and *Shia*.²⁴⁹

In spite of the right to inherit under the Shari'a law, many women do not inherit in practice. Women do not inherit property and widows customarily lose their right to inheritance if they remarry outside of the family of the deceased husband even though the law prescribes otherwise. In addition, because land holding size is a determinant of social status, and power, the desire is to keep land in the family and a woman is not considered part of the family after she marries.²⁵⁰ On the other hand, a woman may be granted inheritance but may forgo her share in favor of her brothers to prevent putting her kinship relationships at stake, since she may rely on those kin relations in a time of need.²⁵¹ Further, a broken relationship with brothers can have an impact on her children's marriages and can lead to being ostracized from the entire kin group. Moreover, women's dowry is regarded as compensation for her inheritance in most of Pakistan.²⁵²

III. Key NGOs Working on Women's Land Rights

Shirkat Gah www.shirkatgah.org

Shirkat Gah Women's Resource Centre, (SG) has a Women Law and Status program that focuses on women's legal rights specifically those related to personal laws (covered under Islamic law). It works with local women's community based organizations to, on the one hand, understand the complexity of personal law issues as they affect women in different local/regional contexts and on the other to build capacity of local organizations through information sharing on rights (especially filling of the marriage contract), training in legal and negotiation skills, and provision of legal aid in select cases. The information and learning

²⁴⁸ SDPI *supra* note 241 at 4

²⁴⁹ Mumtaz, *supra* note 208 at 4.

²⁵⁰ *Id.*

²⁵¹ *Id.*, at 9.

²⁵² *Id.*, at 8.

from the field feeds into SG's policy advocacy. Property and land rights have been the subject of discussion in the field with reference to inheritance.

SG's legal awareness and legal literacy programs have had some results. In a large number of its work areas parents now seriously fill out the marriage certificate (nikah nama) ensuring that all clauses are filled and women protected in marriage.

Aurat Foundation www.af.org.pk

AF is a leading women's rights and advocacy organization with a particular focus on women's political participation. The organization in 1999-2000 developed a number of suggestions for women politicians as measures for women's empowerment to include in their election manifestos. This was in response to government's move at the time to distribute land to the peasants. AF raised the issue that women be included in the scheme and receive half the share in the distributed land or at least be given joint ownership. It proposed that marginalized women, widows and single women should get property rights when they become heads of households. AF's position was premised on the belief that ownership of land would lead to securing economic rights and the security of property would reduce women's vulnerability.

AF also initiated a signature campaign on the issue, publicized it through the media and sent the suggestions to the government and political parties before the 2002 elections asking for:

- the inclusion of women in government's land distribution schemes;
- strict enforcement of inheritance laws and registration of property in the name of women;
- legislation to ensure that women's share in all properties and assets acquired by spouses after marriage is legally recognized and secured for her;
- land reforms and imposition of progressively scaled agricultural income tax;
- redistribution of available arable land to landless peasants ensuring half the recipients were women or had joint title deeds with men.

Roots for Equity Azra Sayeed: sayeed_azra@hotmail.com

Roots for Equity (RFE) is an organization working on land rights in the villages of Sindh. RFE conducts research and awareness raising on rural issues for women and also on land rights. Roots is planning to initiate an experimental project where it wants to lease two acre plots of land in two villages and turn them over to women to manage on their own. It wants to study the dynamics at the local level if poor women have total control over the land.

Thardeep Rural Development Programme www.thardeep.org

Thardeep has conducted a study on land rights in Tharparkar, the desert area of Sindh. The organization felt gaps in information on their work on land ownership, the status of common property grazing lands (livestock is the mainstay of the local population that has traditionally been pastoral), and other related matters and was therefore prompted to undertake the research. The study covers both men and women and is based on old records from the British times. Women of the area, like their counterparts in most of Sindh collect fodder and fetch water but do not have rights over the land they work on, nor ownership of

livestock though they take care of it. Thardeep wants to use the findings of its research for its social mobilization work and will share it widely once it is published.

Sustainable Development Policy Institute (SDPI) www.sdpi.org

SDPI primarily engages in policy research including women centred research. Recognising that there is little information on women's right to land SDPI in collaboration with Action Aid is at the stage of defining the research. They would like to establish the situation on the ground, initially by conducting a literature review, study of policies and research, the correlation between empowerment and land ownership in different geographical locations e.g. mountainous, coastal, plains, with reference to the value of land and inheritance rights of women.

Sri Lanka

I. Background

a. Legal and Political Overview

Sri Lanka, formerly Ceylon, became a democratic socialist republic in 1948. The government is organized into separate executive branch, unicameral legislature, and judiciary. Sri Lanka has a highly complex legal system that has elements of English common law, Roman-Dutch civil code, two codified customary laws, and codified Shari'a law, governed by a constitution. Under Sri Lanka's constitution, land issues are matters for shared legislation and control by the central government and provincial councils.²⁵³



In 2004, Sri Lanka suffered its worst natural disaster, when a major tsunami swept ashore, killing about tens of thousands of people, leaving more than 6,300 missing and 443,000 displaced, and destroying \$1.5 billion in property. Government spending and reconstruction drove growth to more than seven percent in 2006, but reduced agriculture output slowed growth to about six percent in 2007.²⁵⁴

Sri Lanka is politically unstable. Ongoing civil war, between the armed forces of the predominantly Buddhist Sinhalese government and Hindu or Christian Tamil Tiger rebels

²⁵³ Constitution of Sri Lanka, (2000) article 143; Indo-Sri Lankan Accord of July 1987.

²⁵⁴ World Bank, *Unstable Politics Hurt Sri Lanka Investment-Lenders*, (2004) available at <http://go.worldbank.org/Z6OT2YJ2B0>; Foreign Policy, Failed States Index for 2008, available at http://www.foreignpolicy.com/story/cms.php?story_id=4350&page=1.

over the Tamils' right to self-rule in the north and east has intensified over the last 20 years, killing about 64,000 people, displacing one million, and hampering the island's growth and economic development. The World Bank and Asian Development Bank considered Sri Lanka one of the "world's most politically unstable countries" in 2004 and *Foreign Policy* ranked Sri Lanka 20th in its annual Failed States Index for 2008.²⁵⁵

b. Geography and Environment

Sri Lanka is an island country located in South Asia near the southeastern tip of India. The country has a total land area of 64,740 square kilometers, 13.96 percent of which is arable and 15.24 percent is used as permanent pastures.²⁵⁶ Approximately 85 percent of the country's estimated 21.1 million people live in rural areas.²⁵⁷ Density is highest in the southwest where Colombo, the country's main port and industrial center, is located. The net population growth is about 1.1.²⁵⁸

The terrain is comprised of coastal plains in the northern third of country; hills and mountains in south-central Sri Lanka rise to more than 2,133 meters (7,000 ft.) and the climate is tropical.

c. Demographics and Social Data

Sri Lanka is ethnically, linguistically, and religiously diverse. Sinhalese make up 74% of the population and are concentrated in the densely populated southwest.²⁵⁹ Sri Lankan Tamils total about 12% of the population; their South Indian ancestors have lived on the island for centuries and they predominate in the Northern Province.²⁶⁰ Other minorities include Muslims who are both Moors and Malays, at about 7% of the population; Burghers, who are descendants of European colonists, principally from the Netherlands and the United Kingdom; and aboriginal Veddahs²⁶¹. With regard to religious affiliation, most Sinhalese are Buddhist; most Tamils are Hindu; most of Sri Lanka's Muslims practice Sunni Islam and sizable minorities Sinhalese and Tamils are Christians.²⁶²

d. Economics

Sri Lanka is a mostly rural and poor country. Approximately six percent of the Sri Lankan population is unemployed and twenty-two percent of the population is below the poverty line.²⁶³ Further, 5.6 percent of Sri Lankans still survives on less than one dollar per day and 41.7 percent exists on two dollars a day or less.²⁶⁴

²⁵⁵ *Id.*

²⁵⁶ U.S. Dep't of State, *Background Note: Sri Lanka*, July 2009, available at <http://www.state.gov/r/pa/ei/bgn/5249.htm>

²⁵⁷ United Nations Population Fund (UNPF), *State of World Population 2007: Unleashing the Potential of Urban Growth*, 91 (2007) available at http://www.unfpa.org/swp/2007/presskit/pdf/sowp2007_eng.pdf.

²⁵⁸ US Dept of State *supra* note 255

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ World Bank, *World Development Report*, 337 (2008).

²⁶⁴ World Bank, *World Development Report*, 337 (2008).

Currently, Sri Lanka's most active economic sectors are food processing, textiles and apparel, food and beverages, port construction, telecommunications, and insurance and banking. In 2006, plantation crops made up about 15 percent of exports, while textiles and garments accounted for more than 60 percent.²⁶⁵ About 800,000 Sri Lankans work abroad, 90 percent of them in the Middle East; remittances sent home from these citizens living abroad account for more than \$1 billion a year.²⁶⁶

Significantly, over eighty percent of Sri Lanka's people live in rural areas.²⁶⁷ The rural poor account for 95% of Sri Lanka's poor and in 2002 the rural poverty rate was at 25 percent, compared with the urban poverty rate of 8%.²⁶⁸ Further, about 38 percent of the rural population is below the poverty line.²⁶⁹

e. Land and Natural Resources

The State controls over 83 percent, or about 5,440,000 hectares of the total land area of 6,552,500 hectares of land in Sri Lanka²⁷⁰ and the responsibility for land management is divided among 36 agencies within seven or more ministries. Sri Lanka's land, its management, and its uses remain subject to significant government involvement and regulation.

f. Disadvantaged Groups

The 1978 constitution grants primacy to Buddhism while assuring freedom of religion, Historical divisions continue to have an impact on Sri Lankan society and politics. From

Being a minority in a particular area can impact access to important resources. .

independence, the Tamil minority has been uneasy with the country's unitary form of government and apprehensive that the Sinhalese majority would

abuse Tamil rights.²⁷¹ Being a minority in a particular area can impact access to important resources; for instance, Muslims in some areas that suffered during the Tsunami did not benefit from some reconstruction efforts as much as others, however, they did benefit from donations from Muslim support groups.

g. Local Land Related Challenges

Landlessness is high in Sri Lanka. Around 27% of Sri Lankans are landless and this number is project to rise; the current per capita availability of land is 0.29 hectares, and with projected

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ United Nations Population Fund (UNPF), *supra* note 256; and World Bank, *Sri Lanka: Priorities for Agriculture and Rural Development*, available at <http://go.worldbank.org/8SMY8BK3S0>.

²⁶⁸ Kostas Stamoulis and Alberto Zezza, *A Conceptual Framework for National Agricultural, Rural Development, and Food Security Strategies and Policies*, Food and Agriculture Organization, ESA Working Paper No. 03-17, Table 3 at 19, (N 2003) available at <ftp://ftp.fao.org/docrep/fao/007/ae050e/ae050e00.pdf>.

²⁶⁹ *Id.*

²⁷⁰ R.B. Ridgway & P. Silva, *Land Availability and Land Tenure*, 10 (2005) available at http://www.nri.org/projects/biomass/conference_papers/land_availability_for_biomass_production_in_sl.pdf.

²⁷¹ U.S. Dept. of State, *supra* note 255

population growth it is anticipated that the per capita availability of land will be further reduced to 0.22 hectares.²⁷²

Natural disaster and conflict have had an impact on Sri Lanka's natural resources. Guerrilla warfare and the clearing of forests for military purposes extensively damaged the forests and environment in the North and East.²⁷³ Decline in forestry activities reduced the rural population's employment opportunities. Acute shortage of firewood, the primary energy source for cooking, especially affected the Jaffna peninsula that has no forests. Depletion of forest cover affects ground water levels and creates environmental problems. Unlawful operations such as illicit timber harvesting contribute to environmental degradation.

h. Women's Property Ownership, Activities and Employment

Since the 1940s the Sri Lankan government has invested in basic health and education; thus, indicators of Sri Lankan women's life expectancy, literacy, and maternal mortality have been impressive at a national level.²⁷⁴ The 2008 estimate of Sri Lankan women's life expectancy at birth is 77 years, compared to 72.95 year for Sri Lankan men.²⁷⁵ In 2004, adult literacy rates in Sri Lanka were estimated at 89.1% for women, and 92.3% for men and men, while for children 15 years of age and younger it is 96.1 percent for girls and 95.1 percent for boys.²⁷⁶ Similarly, Sri Lanka's net primary school enrollment rate was 98 percent for women and 99 percent for men, with 93 percent of women progressing through grade 5 and 91 percent of them completing their primary education.²⁷⁷

Customs and traditions vary across different regions and religions and affect Sri Lankan women in different ways. Sri Lankan women face gender barriers in the labor market and in the political arena. All national and local assemblies have been consistently male-dominated. The proportion of women members in parliament or the national state assembly has never exceeded five percent since 1931.²⁷⁸ Most women are employed in the informal sector; in 2006, Sri Lankan women's labor force participation rate 35 percent, as compared to men whose rate of participation 68.1 percent.²⁷⁹

In one study that covered three locations in Sri Lanka, about 30% of women owned property.²⁸⁰ Of these women, 54% owned only a house but not the land that the house was

²⁷² Centre for Policy Alternatives, *Landlessness and Land Rights in Post-Tsunami Sri Lanka*, at 15 (2005) available at http://www.cpalanka.org/research_papers/IFRC_land_study.pdf.

²⁷³ L. Wanasundera, *Rural Women in Sri Lanka's Post-Conflict Rural Economy*, at 7 (2006), Center for Women's Research Sri Lanka for FAO, RAP Publication 2006/13,

²⁷⁴ Nelathi De Soysa, *The Truth Behind Sri Lanka's Development Statistics*, (2000) available at <http://www.twinside.org.sg/title/2093.htm>

²⁷⁵ CIA, *The World Factbook: Sri Lanka Country Profile*, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ce.html>

²⁷⁶ *Id.*

²⁷⁷ World Bank, Sri Lanka GenderStats Profile, available at <http://devdata.worldbank.org/genderstats/genderRpt.asp?rpt=profile&cty=LKA,Sri%20Lanka&hm=home>.

²⁷⁸ Jayaweera, *supra* note 24, at 19.

²⁷⁹ Asian Development Bank, *Key Indicators of Developing Asian and Pacific Countries*, at 354, (2006) available at http://www.adb.org/Documents/Books/Key_Indicators/2007/pdf/SRI.pdf

²⁸⁰ Indika Bulankulame, *Property Ownership and Inheritance Rights of Women for Social Protection—The South Asia Experience: Synthesis Report of three studies*, (2006 International Center for Research on Women) at 74-6.

on.²⁸¹ Also, the majority of female landowners had received their property through inheritance.²⁸² Nineteen percent of rural households in the North and East are female-headed households.²⁸³

i. Land Policy and Reform

The Land Development Ordinance (LDO) of 1935 regulates state agricultural lands given by state-issued permits to Sri Lankan citizens. The LDO is gender neutral, but its implementation has favored males.²⁸⁴ A widow or a woman who previously owned land qualifies; however, on remarriage a widow loses the right to cultivate if she has not been nominated, and she cannot nominate a successor.²⁸⁵

II. Legal and Customary Land Rights for Women

a. Legal Overview

Present-day Sri Lankan law is a highly complex admixture of custom-based legal systems made up of Roman-Dutch civil law and English common law, customary laws – Kandyan and Tesawalami – and Shari'a laws.²⁸⁶

Roman-Dutch Law now generally applies in Sri Lanka when statutes and indigenous laws do not regulate the issue in question.²⁸⁷ Relevant laws from this tradition are the General Law of Matrimonial Rights and Inheritance Ordinance²⁸⁸ and the Married Women's Property Ordinance.²⁸⁹

Kandyan Law applies to ethnic Sinhalese whose can trace their lineage back to the Kandyan provinces during the period of the Kandyan monarchy in central Sri Lanka which ended in the 1850s. Kandyan Sinhalese are covered by Kandyan law unless they choose to opt out, and complete the necessary administrative steps.

Theswalamai Law is based on ancient customs of Jaffna Tamils in Sri Lanka. It applies to lands situated in the Northern Province and is not applicable to all Tamils, just those Tamils who are inhabitants of the Jaffna Peninsula in Northern Sri Lanka. The relevant Theswalamai law is the Matrimonial Rights and Inheritance Ordinance of 1911.

The personal laws of Islam apply to all Muslims in Sri Lanka. When a Muslim marries another Muslim, the bride and the groom do not have the option of getting married under the General Law, unlike in the case of Kandyan Sinhalese. Marriage, divorce and other related issues involving Muslims are governed by the Marriage and Divorce (Muslim) Act,²⁹⁰

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ Wanasundera, *supra* note 272 at 25.

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ Thomas H. Reynolds and Arturo A. Flores, *Foreign Law Guide: Current Sources of Codes and Basic Legislation in Jurisdictions of the World – Sri Lanka* (2000).

²⁸⁷ *Id.*

²⁸⁸ Matrimonial Rights and Inheritance Ordinance of 1877 (as amended)

²⁸⁹ Matrimonial Rights and Inheritance Ordinance of 1877 (as amended)

²⁹⁰ Marriage and Divorce (Muslim) Act, no.13 of 1951

and any subsequent amendments. It also regulates the Quazi courts applying that law. Issues related to interstate succession and donations, involving Muslims, are dealt with under the Muslim Interstate Succession Ordinance,²⁹¹ and any subsequent amendments.²⁹²

b. Marriage

Kandyan personal laws distinguish between *diga* and *binna* marriages. A *binna* marriage is matrilocal, meaning that the bridegroom shifts to the bride's house upon marriage. A *diga* marriage is patrilocal, meaning the bride moves to the bridegroom's house upon marriage.²⁹³ These designations have an impact on the woman's right to inherit ancestral property.

Polygamy is permitted for Muslims and Muslims are excluded from the penal code which criminalizes bigamy.

Polygamy is permitted for Muslims and Muslims are excluded from the penal code which criminalizes bigamy.²⁹⁴ However, the Muslim Marriage Divorce Act requires notification

in the event of a Muslim male wishing to enter into a polygamous marriage.

In Sinhalese culture, which is dominant, the bride is given a dowry separate from any other gifts. This is her own property, controlled and managed by the bride.²⁹⁵

In many Sri Lankan cultures, cross-cousin marriage is preferred. It is most acceptable person for man to marry is the daughter of his father's sister and in many villages, people spend their entire childhood with a clear knowledge of their future marriage plans and in close proximity to their future spouses.

c. Divorce, Separation and Abandonment

For Muslims, the Muslim Marriage Divorce Act provides detailed rules regarding the registration of divorce by the husband and the wife. A husband who "intends to pronounce the *talaq* on his wife" shall give notice to the *Quazi* of the area where she is resident, and the *Quazi's* duty is to attempt to effect a reconciliation, with the help of the relatives of both parties, as well as elders and influential Muslims of the area.²⁹⁶

While legal divorce is easy to obtain, and divorces of customary marriages occur through mutual consent of the partners in consultation with their extended families, most marriages do not end in divorce because of the social pressure and support exerted by kin of both the husband and the wife."²⁹⁷

The grounds for divorce under Kandyan personal laws continue to be discriminatory towards women; they are required to prove adultery coupled with gross cruelty or incest,

²⁹¹ Muslim Interstate Succession Ordinance, no.10 of 1931

²⁹² See Marriage and Divorce (Muslim) Act, no.13 of 1951

²⁹³ Kandyan Law (1939) arts 10-14

²⁹⁴ Panditaratne *supra* note 140 at 1015.

²⁹⁵ Bulankulame *supra* note 279 at 66.

²⁹⁶ See Marriage and Divorce (Muslim) Act, no.13 of 1951

²⁹⁷ Russell *supra* note 295.

while men need prove only adultery.²⁹⁸ Under the General law, divorce is based on the concept of "fault" the legal grounds for divorce, however, are the same for both parties.²⁹⁹

d. Inheritance and Division of Property

Inheritance for Muslims is guided by the uncodified Muslim law governing the sect to which the deceased belongs.³⁰⁰ Generally this means that a female in a class of heirs will typically receive one half of the share of a male in the same class of heirs.³⁰¹

Kandyan inheritance laws distinguish between *diga* and *binna* marriages. In a *binna* marriage if the bride's father dies, she receives an equal share of the father's ancestral (*paraveni*) property together with her brothers, unmarried sisters and other sisters in *binna* marriages.³⁰² In a *diga* marriage, if the bride's father dies, she does not receive any share of his ancestral property.³⁰³ A *diga* married daughter is precluded from claiming parental property unless she has acquired *binna* rights or returns to the *mulgedera* (family home).³⁰⁴ However, daughters who marry in *diga* after the death of her father must transfer for fair market value any ancestral property she inherited to her siblings who also inherited before the conclusion of one year.³⁰⁵

Under the Theasawalmai, a widow keeps separate property; widow receives half of property acquired during marriage and half shared equally amongst children (sons and daughters); widow has no right to ancestral property and children (sons and daughters) inherit equally.³⁰⁶

For all others, the Matrimonial Rights and Inheritance Ordinance applies, in which a widow inherits one half share of the deceased's property and one half shared among descendants (sons and daughters)³⁰⁷

Region, ethnic group, and religion can play a part in what whether a women inherits family land in practice. For instance, in both Tamil and Muslim communities of the North East Province, inheritance follows the matrilineal line.³⁰⁸

²⁹⁸ Panditaratne *supra* note 140 at 1016

²⁹⁹ *Id.*

³⁰⁰ Muslim Interstate Succession Ordinance, No.10 of 1931, article 2 provides "It is hereby declared that the law applicable to the intestacy of any deceased Muslim...shall be the Muslim law governing the sect to which such deceased Muslim belonged"

³⁰¹ Panditaratne *supra* note 140 at 1016.

³⁰² Kandyan Law, arts 10-12

³⁰³ See Kandyan Law, arts 12-14, see also Panditaratne *supra* note 140 at 1016.

³⁰⁴ Panditaratne *supra* note 140 at 1017.

³⁰⁵ See Kandyan Law, art 12.

³⁰⁶ Matrimonial Rights and Inheritance (Jaffna), arts 21-31.

³⁰⁷ See Matrimonial Rights and Inheritance Ordinance, No. 15 of 1876 (as amended), Part III.

³⁰⁸ Wanasundera *supra* note 272 at 24.

III. Key NGOs Working on Women's Land Rights

Sri Lanka Women's NGO Forum

<http://www.cenwor.lk/slwomenngoforum.html#back>

The main objective of this organization is to act as a lobbying and advocacy body at regional, national, and international levels. It focuses in particular on raising awareness on women's issues and rights in Sri Lanka.

Centre for Women's Research (CENWOR) <http://www.cenwor.lk/>

The main objective of CENWOR is to support women in realizing their full potential and to achieving equality in all spheres of life. Information is one of the key functions of CENWOR. CENWOR thus took a leading role in the development of a research database, which has subsequently been used for lobbying and advocacy. The centre offers training and publishes original research. It also produces posters, leaflets, manuals and bibliographies.

Muslim Women's Research and Action Forum www.mwraf.org

The objectives of the MWRAF are specifically focused on awareness raising, empowering, and promoting the cause of Muslim women in Sri Lanka. They also seek to advocate on behalf of Muslim women's groups and create an active network with groups working with similar objectives at local, national, and international levels.

Their activities are focused on action research, mobilization, legal counseling and legal aid. Action research focuses on the formal and customary legal and social issues facing Muslim women and leads to proposals for reform. Mobilization efforts focus on legal literacy of urban and rural Muslim women. Their legal counseling and legal aid services focus on clients identified in their mobilization efforts.

